

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF T-MOBILE NORTHEAST, LLC: Case No. S-2800
AND J. MAURICE CARLISLE, JR. : OZAH No. 11-20
:
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A hearing in the above-entitled matter was held on May 20, 2011, commencing at 9:36 a.m., at the Council Office Building, 100 Maryland Avenue, Rockville, Maryland 20850 before:

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Hearing Examiner

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1 P R O C E E D I N G S

2 MS. ROBESON: Thank you. Good morning. This is a
3 public hearing in the matter of T-Mobile Northeast, LLC and
4 J. Maurice Carlisle, BOA case number S-2800, OZAH number
5 11-20, an application for a special exception to allow a
6 telecommunications facility at 22730 Mt. Ephraim Road,
7 Dickerson, Maryland on land in the RDT zone. The property's
8 legal tax account number is 00914473.

9 This hearing is conducted on behalf of the Board
10 of Appeals. I am, my name is Lynn Robeson. I'm the hearing
11 examiner. I'll be hearing all the evidence today, and I
12 will write a report and recommendation to the Board who will
13 make the final decision on the case.

14 Will the parties identify themselves for the
15 record? I see Mr. Hughes.

16 MR. HUGHES: Yes, ma'am. Sean Hughes on behalf of
17 T-Mobile, and I have some representatives from T-Mobile. I
18 have Mr. Carlisle, the property owner. And there is one
19 gentleman from the area who is here, I think, who may be not
20 in support.

21 MS. ROBESON: Okay. Who here is not represented
22 by Mr. Hughes. Is that you, sir?

23 MR. KENDRICK: Yes.

24 MS. ROBESON: And can you state your name?

25 MR. KENDRICK: Yes, my name is Chris Kendrick.

1 I'm treasurer of Sugarloaf Citizens Association, and I'm
2 here on behalf of a coalition including the Audubon
3 Naturalist Society of Montgomery County, Sierra Club,
4 Sugarloaf Citizens, and the Montgomery Countryside Alliance.

5 And I believe this was entered into the record on this
6 case. MS. ROBESON: Okay, let me --

7 MR. KENDRICK: But there is a broad coalition
8 being represented.

9 MS. ROBESON: You're not -- why don't you come --
10 you have the right to come up to the table to ask questions
11 of T-Mobile's witnesses, if you wish, and to present your
12 testimony or on behalf of the coalition, in your words.

13 The way we work it here is that first, T-Mobile is
14 going to put their witnesses on. You have the right to sit
15 at the table and ask questions of their witnesses. Once
16 they've finished with their witnesses, you have the right to
17 present your testimony.

18 MR. KENDRICK: Okay. All right.

19 MS. ROBESON: So if you want to come at the table,
20 do we have a mike over -- I can't see behind that water
21 bottle.

22 (Discussion off the record.)

23 MR. KENDRICK: May I first ask if you have seen
24 this or know that, in fact, it was entered into the record?
25 Is that something --

1 MS. ROBESON: I think I have seen it.

2 MR. KENDRICK: Okay.

3 MS. ROBESON: But what I need to do first, this
4 is --

5 MR. KENDRICK: Yes. I just want to make sure it
6 is entered.

7 MS. ROBESON: Yes. We'll get to that. I think it
8 is but we'll get to that. Let me just explain that this is
9 a quasi-judicial hearing, which means that we have -- it's
10 informal, but it does have some formalities.

11 MR. KENDRICK: Okay.

12 MS. ROBESON: And some of the formalities are, you
13 have to present your testimony under oath. Witnesses are
14 sworn, and they are subject to cross-examination. So you
15 have the right to question T-Mobile's witnesses on their
16 testimony. T-Mobile has the right to question, Mr. Hughes
17 has the right to question you on your testimony.

18 MR. KENDRICK: Okay.

19 MS. ROBESON: Okay. The testimony is under oath,
20 though, so what I'm asking you to do is wait to present that
21 until it's your turn in the proceedings, and I'll put you
22 under oath and we can then make sure that that's in the
23 record subject to any objections Mr. Hughes might have.

24 MR. KENDRICK: Okay. All right. Thank you.

25 MS. ROBESON: One thing, I think that it's

1 important to understand with a special exception use is that
2 the term exception is not really accurate. Legally, the
3 petitioner has to prove that he meets certain conditions set
4 forth in the Zoning Ordinance. And if he can prove that,
5 then the petition may be granted.

6 So it's not really an exception. It's a matter of
7 proving those conditions. And those conditions are set
8 forth in the technical staff report, which I don't know if
9 you've seen it. But the requirements that they have to prove
10 are set forth in that.

11 Do we have any preliminary matters? I have a
12 preliminary matter from reviewing the file last night. I'm
13 unclear whether a Tower, I did not see a Tower Committee
14 report for the revised location. Is that on -- it's
15 supposed to be here five days before the hearing. Is that
16 on its way, or what's the status of that?

17 MR. HUGHES: Yes. Our position is that the Tower
18 Committee did offer a recommendation for the subject
19 property, and that there was a, what we view as a minor, not
20 a material change to it, in that we think it's less of an
21 impact, and further away from the road. It reduced in
22 height. So based upon, our position is based upon their
23 technical review, and their determination that there are no
24 existing sites in the area, it wouldn't change their
25 position on this subject property.

1 So we don't believe that, and I don't think there
2 is code criteria that makes it clear that every time there
3 is a tiny tweak to it, especially if it is on the same
4 property, that it requires an additional review.

5 MS. ROBESON: Well, I guess what I'm concerned
6 about is that the propagation maps are different.

7 MR. HUGHES: Well, we have an engineer who is
8 there to testify about this. I guess again my position is,
9 our position is, it's not a material change. It's a minor
10 change. It's on the same property, which is large. It
11 moved about a little over 1,000 feet, and it reduced in
12 height.

13 So we could still testify to the need of it, but
14 if we had increased the height or if we had moved to another
15 property, clearly that's a material change. But since the
16 impact, we believe, is less, and there can be testimony as
17 to the need, and the Board needs to find an independent
18 finding as to whether there is need from an engineering,
19 rate of frequency engineering, we believe that testimony can
20 come out today. There is a recommendation that meets the
21 letter of the law from the Tower Committee for this
22 property.

23 MS. ROBESON: Well, I'm not sure that the visual
24 impact is the question for the Tower Committee.

25 MR. HUGHES: Well, I agree, but they often weigh

1 in on that. But I agree with you.

2 MS. ROBESON: I know, and they can weigh in on
3 that.

4 MR. HUGHES: Yes. Right.

5 MS. ROBESON: I think my question is, their
6 determination is of need and coverage.

7 MR. HUGHES: Right. Right. I agree with you.

8 MS. ROBESON: And I don't have a determination
9 from them.

10 MR. HUGHES: Well --

11 MS. ROBESON: I guess my concern is, when I looked
12 at the propagation maps, they are significantly different.
13 And I know that technical staff was concerned because of the
14 difference, and also because, well, just to my eye, it looks
15 like you're not going to get the coverage that you were
16 shooting for, so to speak, colloquially. So to me, how big
17 is this property?

18 MR. HUGHES: Well, we'll be testifying, it's about
19 90 acres. But we moved it about a little over 1,000 feet.

20 MS. ROBESON: Well, see, that's my issue. You
21 lowered it.

22 MR. HUGHES: Right. You're right. But here's
23 what the Tower Committee's objective is. Their charge is to
24 evaluate whether there are existing structures to locate
25 upon in the area, versus building a new one, and whether or

1 not there are coverage needs exist.

2 There's no doubt that there's a coverage need that
3 exists out here. There will be additional testimony about
4 that. They agreed that T-Mobile does not have sufficient
5 coverage here. In fact, we have almost no in building
6 coverage. So the 150 would enhance and meet coverage
7 objectives. And you also hear, you would hear testimony
8 today that those coverage objectives are still enhanced, and
9 there will be enhanced wireless service.

10 What the planning staff was seeming to indicate in
11 the report is, I don't know what they are trying to say. I
12 guess if you don't meet one coverage objective, you
13 shouldn't have any sites out there, which I don't think
14 that's what the goal of the Tower Committee is. And there
15 is an independent finding by the Board, that's in the law
16 now, that the Board has to find independent finding that
17 there is an RF need, which there will be testimony about.

18 MS. ROBESON: Well, I guess my question to you is,
19 there is also a statutory mandate, I mean, when you have a
20 100-acre, 90-acre, whatever the acreage is of the property,
21 that there can be big differences, I mean, I've heard enough
22 of your cases knowing that going up a hill or the placement
23 on the same property has a significant difference.

24 I guess my question to you is, do you have a
25 problem, an issue going with the Tower Committee and having

1 them review this?

2 MR. HUGHES: No. Hold on one second.

3 (Discussion off the record.)

4 MR. HUGHES: Yes. I apologize. I guess our first
5 position is, no, we don't see that as a problem. We didn't
6 see it as necessary under the code or particularly relevant
7 in this case, because it's a minor change. And we would
8 have live testimony.

9 We did also, and we can have testimony about this,
10 T-Mobile did send the revised coordinates, usually when
11 there is a minor change, you send the Tower Committee an
12 update for informational purposes. So we did send them
13 that. There is email exchange that shows we sent them that.
14 And they didn't feel there was any need to have an
15 additional review by them. So there is an email record.

16 I don't think we have that with us, but there is
17 an email record that we could supply that shows that we did
18 send it to the chair, and it was determined that it did not
19 need to come back for an additional review, because I think,
20 I believe for the reason I stated, that it's not a material
21 change.

22 There is still, there was a need and there still
23 is a coverage need there. And you'll have testimony how
24 this will enhance the wireless service for our customers out
25 there.

1 MS. ROBESON: I'm sorry, I did not get your name.

2 MR. KENDRICK: My name is Chris Kendrick.

3 MS. ROBESON: Do you have anything to say on this
4 issue?

5 MR. KENDRICK: Well, and I am not sure that I know
6 about -- the last information I have is we're looking at a
7 127-foot tall silo enclosed tower located on a property that
8 has no farm, no farm operations anywhere near it, out of
9 context, and that the balloon test that was done was shared
10 with numerous groups, and all agreed that in the context of
11 the master plan, the zone, and the historic and recreational
12 significance of that area, that this was a view shed
13 disruption that was not acceptable.

14 Now, to T-Mobile's credit, they have met with us
15 previously in Poolesville and elsewhere, and we thought --

16 MS. ROBESON: Before we get to that --

17 MR. KENDRICK: Yes.

18 MS. ROBESON: -- I think you are speaking
19 factually, so I'm going to swear you in.

20 MR. KENDRICK: Okay.

21 MS. ROBESON: Can you please raise your right
22 hand?

23 (Witness sworn.)

24 MS. ROBESON: Okay. Now continue speaking.

25 MR. KENDRICK: Okay. We have collectively made

1 counter-proposals and even contacted alternative property
2 owners. There is a dairy farm owned by the Savage family
3 that is much closer to the Town of Dickerson, Neutron
4 Products, the train station, et cetera, where we believe
5 that a structure of the type that they are proposing would
6 be placed in context, because there are existing silos and
7 there is a farming operation. And it's out of the view shed
8 that comes from Mount Ephraim, toward the mountain.

9 And further, there are other roads in the area
10 with views of the mountain that would also be disrupted.
11 And we are sort of perplexed that they are going forward
12 with this given the dialogue and what we thought were
13 agreements about the nature of their roles technically, the
14 engineering, and alternative methods and locations that
15 would satisfy these.

16 So, I'm really here to say on behalf of a large
17 number of people, because very few of us even found out
18 about this in time to appear here today, that we don't,
19 we're perplexed why they are going forward with this
20 proposal that is out of context and inconsistent with
21 preserving all of these characteristics in that area,
22 including the historic and cultural significance of the view
23 shed.

24 MS. ROBESON: And what's your response?

25 MR. HUGHES: I guess our response is several, is

1 that yes, we've had discussions with -- we had a community
2 meeting. We've had discussions with MCA and with staff and
3 with some of the neighbors around there. And a lot of the
4 feedback we got at the community meeting was, move it
5 further away from the road, which this application did; look
6 at a silo, which this application does; and lower the
7 height, which this application does.

8 And we believe that, you know, we certainly have
9 to design our system. We certainly have to figure out who
10 we can reach a lease with and what works for us. And we
11 have invested a lot of time and effort into this, and we
12 think with these revised application that we feel very
13 confident that it meets not only the letter of the law under
14 the Montgomery County zoning code, as well as the leading
15 special exception cases, but also meets the spirit of it.

16 This is a unique area, but this is an area that
17 needs wireless connectivity. And wireless connectivity out
18 there is very poor right now. And this silo, as you will
19 see, or you may have seen through the photo simulations, and
20 other issues, blends in pretty darn well.

21 And in order to have connectivity out there,
22 you're going to have to have some height. And we think that
23 it is an appropriate application, this over 1,000 feet off
24 the road. And you'll hear testimony from the landlord that
25 I don't, well, I don't know if it's really relevant, there

1 actually are farming operations that have historically
2 occurred on this property and still do.

3 So we just, we believe that, we understand that
4 some people may say something else is a little better. You
5 know, it's very subjective. But our position is that this
6 is a very good application. It will provide enhanced
7 wireless. It does take into factor all the unique
8 situations out there.

9 And as the overall staff recommendation of
10 approval was, although we take some exceptions with some of
11 the conditions, some of them we're okay with, some of them
12 we're not, but we believe that this would fill a nice need
13 and does meet the criteria.

14 MS. ROBESON: Okay. I'm a little uncomfortable
15 proceeding without a revised Tower Commission report. I've
16 had revised reports in cases from T-Mobile that moved the
17 tower less than, well, I don't remember the exact
18 measurement, that went back and got the Tower report.

19 I think if you wish to proceed, I guess I'm
20 willing to hear some of the testimony today. I am not ready
21 to hear Mr. Jews because I think it's important to have the
22 Tower Committee report before we hear his questions, because
23 I know that the Board does rely on the Tower Committee
24 report.

25 I know it's the same property, but to me the

1 reduction in height has nothing -- the visual impact, you
2 know, may be less, but to the extent it has an effect on the
3 coverage and, you know, the alternatives, I just can't say
4 without their report that the Board uses their report in
5 making their findings.

6 MR. HUGHES: If I could counter just a few things.
7 First of all, perhaps, if you would be so inclined, I do
8 have a few counter steps for you to consider, but perhaps
9 you could give us a 10-minute recess and see if we could get
10 those emails from the Tower Committee. Because we're kind
11 of stuck in a situation.

12 We sent the information to the Tower Committee.
13 They determined they didn't need to review it again. So I'm
14 not sure what we could do in that situation. We do have a
15 valid recommendation from them, and I think it's the law,
16 the code. And as to need -- first of all, also the code
17 recently changed last June it was.

18 MS. ROBESON: Right.

19 MR. HUGHES: So the Board has to find -- so you
20 can look at the Tower Committee's report, which it should
21 and I'm sure it does, but it says it has to find an
22 independent finding of an RF need.

23 MS. ROBESON: I know.

24 MR. HUGHES: So that's there. And if you look at
25 their analysis and all, they said the coverage is poor out

1 there for T-Mobile. This would improve their coverage.
2 Just because it's moved 1,000 feet on the same property and
3 reduced in height doesn't mean that they have good coverage
4 now. We certainly still have a coverage need. And this
5 will improve the coverage.

6 So there is nothing in the code that says you have
7 to have X level of coverage. You have to have 98 percent,
8 or 80 percent, or 70 percent. It shows you have to have a
9 need, and that the applications will meet need.

10 MS. ROBESON: Well, I think what technical staff,
11 I think what technical staff said, however, is that their
12 recommendation of approval was based on the fact that no, a
13 second tower would be needed in that area.

14 MR. HUGHES: I have no idea where they could come
15 up or create that. That's not for staff to determine.
16 Every SE has to be evaluated on its face. Right now, there
17 will be testimony, we don't have any other plans for a new
18 site, but if we were to file one next month, and our plans
19 changed, and we could show we meet the criteria, that has no
20 bearing. I mean, that's a shell game.

21 Staff is, on one hand, is going to say, we don't
22 want you to build something 150 feet. We don't want you to
23 build something 180 feet. No, that's too tall. That's
24 going to have an impact.

25 So then if they say, we want you to go lower, but

1 you're still not going to meet your need and you're going to
2 need other ones, no, you can't do that. That's effectively
3 denying service.

4 If staff says, you can't have a tall one, but if
5 you are going to do a short one, and you're going to need
6 another one, no, you can't do that either.

7 MS. ROBESON: Yes.

8 MR. KENDRICK: Can I, first of all, I would like
9 to ask, are we discussing the 127-foot silo which a balloon
10 test was done at the location that you're talking about?

11 MR. HUGHES: Yes, sir.

12 MR. KENDRICK: Okay. I wanted to make sure that
13 with regard to our assertions with respect to the view shed
14 that we are talking apples and apples.

15 MR. HUGHES: Yes.

16 MR. KENDRICK: Okay. Secondarily, I wanted to ask
17 about what the cover goals are, because there's been a lot
18 of confusing information about what the coverage goals are.

19 I know that there are alternate technologies that cost more
20 which have been used in locations where you're talking about
21 providing service to moving vehicular traffic, what are they
22 called, distributed --

23 MR. HUGHES: Nets.

24 MR. KENDRICK: Yes. What is that --

25 MS. ROBESON: No, he's not on the stand.

1 MR. KENDRICK: Okay. All right.

2 MS. ROBESON: Just you're on the stand.

3 MR. KENDRICK: In any case, so, you know, there
4 are different things that are happening now today in
5 wireless networks. There's service for people in vehicular
6 traffic. There's service to people inside of buildings.
7 And there is service for phone conversations. There's
8 service for text. And then there is service for internet
9 access, all of it being brought together in these various
10 networks.

11 And I don't think we've gotten a clear
12 understanding of what number of, you know, perspective and
13 real clients are trying to serve, and in what manner. But
14 if, in fact, this is because of a dead zone from vehicular
15 traffic customers, that there is a distributed technology
16 that it's more expensive for them to do the insulation but
17 it is essentially co-located on --

18 MS. ROBESON: So you're saying there are
19 alternative technologies that may be available that have
20 less of an impact, but they are more expensive?

21 MR. KENDRICK: Right. Right, the up front and
22 perhaps even the maintenance as well. But the point being
23 that we're arguing for the historic, cultural significance
24 of the view shed and what this does to disrupt it.

25 And when he mentioned a moment ago that there were

1 some farming operations in the vicinity at some time, what
2 we're saying is that the silo at this location is in the
3 middle of a field with nothing else around it.

4 MS. ROBESON: Okay, that's -- we're not there.

5 MR. KENDRICK: But technologically, if we
6 understand that, and again, we have to know clearly what the
7 goals are to even have a meaningful discussion of what
8 alternatives there might be. But it's been our
9 understanding that at one point somebody talked about there
10 being, you know, dropouts from vehicular traffic in the
11 area.

12 And if that's the case, then one specific
13 alternative that would be ideal to go the extra expense and
14 satisfy these other interests would be to put in this
15 distributed system that essentially is co-located on poles
16 that are already there for other infrastructure.

17 MS. ROBESON: Okay.

18 MR. HUGHES: Can I just counter, briefly, to that?
19 I guess I would say, first of all, I respect his position,
20 and I know he has been fairly involved in some of this.

21 From our position, there has been no confusion
22 over our coverage goals. There will be testimony about
23 that, if we proceed forward. We know what our customer
24 goals are here for coverage.

25 Regarding what type of system, we've provided an

1 application that shows what our proposal is. And there is
2 nothing in the code that allows anyone else to tell an
3 applicant what business they should run, or how they should
4 run the business, or design our system. The question is
5 whether it meets the code criteria.

6 It's like telling, McDonalds came in for a special
7 exception. Well, you can only do one counter here, and down
8 the road, you can build another building and you can have a
9 counter here. And down the third road you can build a
10 counter that serves just drinks. I mean, the question
11 is whether we meet the code
12 criteria here.

13 MS. ROBESON: Okay. What I'd like to do, let's do
14 this. I think it may be better if the parties have time to
15 take -- I would really, to take a half hour recess, I would
16 really like to see if you can scrounge them up from
17 somewhere. I would really like to see the emails from the
18 Tower Commission as to what there position is on this, okay,
19 before we make a decision on going forward. Yes, sir.

20 MR. KENDRICK: Is there an opportunity for one
21 comment before recess?

22 MS. ROBESON: Okay. What -- Mr. Hughes, I'm going
23 to give them a last --

24 MR. HUGHES: I'll try not to counter.

25 MS. ROBESON: Yes. Go ahead, Mr. Kendrick.

1 MR. KENDRICK: All I wanted to say is, I think
2 that the reason that there are hearings, sometimes, for
3 situations like the one that we are now looking at, is for
4 the very reason that serving the letter of the law doesn't
5 always serve the spirit. And I think that, in fact, this is
6 the place where we're trying to determine, what is the
7 spirit.

8 And I think that the Sugarloaf Mountain itself,
9 which is a nationally recognized historic landmark, and a
10 major resource for recreationists in the region, and so
11 forth, requires special consideration. And that's the
12 spirit I'm here to defend. So that's an important
13 consideration.

14 MS. ROBESON: Well, hopefully, hopefully we can
15 marry the letter and the intent. All right. Let's do this.
16 We're going to go off the record now. When you come back,
17 Mr. Kendrick, you will still be under oath, and we'll get
18 the, if you can produce the emails, we'll get them into the
19 record. Okay.

20 Can you provide, once you do find them, can you
21 provide copies to Mr. Kendrick?

22 MR. HUGHES: Absolutely.

23 MS. ROBESON: Okay. We'll go off the record for
24 30 minutes, so we'll be back at 10:30.

25 MR. HUGHES: Okay. Thank you.

1 MR. KENDRICK: Thank you.

2 MS. ROBESON: Wait. One more question?

3 (Discussion off the record.)

4 (Whereupon, at 10:01 a.m., a brief recess was
5 taken.)

6 MS. ROBESON: We'll go back on the record. It's
7 10:50. And Mr. Hughes, were you able to locate --

8 MR. HUGHES: Yes, ma'am. We do have some emails
9 we'd like you to consider. We certainly would like to, in
10 some fashion, proceed forward if at all possible today. And
11 we'd like to give you this to help in your decision, and/or
12 provide some additional argument for discussion.

13 MS. ROBESON: Okay.

14 MR. HUGHES: Do you want to review those first, or
15 do you want me to try to explain what I think they are?

16 MS. ROBESON: Let me just mark them, first.

17 MR. HUGHES: Thank you.

18 MS. ROBESON: Okay. I see --

19 MR. HUGHES: And Mr. Kendrick does have copies.

20 MS. ROBESON: Okay.

21 MR. KENDRICK: Thank you.

22 MS. ROBESON: I have one from Margie Williams
23 dated April 28th, 2011, and that will be -- I'll do them
24 chronologically. One from Margie Williams dated April 27th,
25 2011, and that will be Exhibit 24. And then I have one from

1 the same person dated April 28th, and that will be Exhibit
2 25.

3 (Exhibit Nos. 24-25 were
4 marked for identification.)

5 MR. HUGHES: Okay.

6 MR. KENDRICK: Does anybody have a pen or a pencil
7 I could borrow? Okay, so the 27th is number 24?

8 MS. ROBESON: Yes.

9 (Discussion off the record.)

10 MS. ROBESON: Okay. Mr. Hughes, why don't you
11 explain what these are.

12 MR. HUGHES: Okay. Thank you.

13 MS. ROBESON: Now, before he starts, Mr. Kendrick,
14 you have the opportunity to object to these if you feel that
15 they aren't relevant or, you know, they aren't credible
16 enough. So I'm just letting you know while he states,
17 described what they are. Okay. I'm sorry.

18 MR. KENDRICK: I'm in the process, like you, of
19 learning what these are, and it looks like Exhibit 25 is, in
20 large measure, Exhibit 22.

21 MS. ROBESON: Well, we'll --

22 MR. KENDRICK: Okay.

23 MS. ROBESON: -- you take your time --

24 MR. KENDRICK: Okay.

25 MS. ROBESON: -- and work through them, and we'll

1 let him proceed, Mr. Hughes proceed. And then if you have
2 questions, you can come back with those. Okay, Mr. Hughes,
3 go ahead.

4 MR. HUGHES: Thank you. Yes, Madam Hearing
5 Examiner, 24, the dated April 27th email, at least at the
6 top and actually at the bottom -- well, there is earlier
7 dates. What that is, is it shows at the bottom, the first
8 email started from Ms. Morrison, and she is stating for
9 informational purposes, she is noting that there were some
10 minor changes to what they reviewed.

11 As we would have testimony and as I stated
12 earlier, quite often if there are minor changes, you send
13 the Tower Committee for informational purposes so they have
14 that. And then you could see the second email from
15 Ms. Morrison saying, is this going to be a discussion item,
16 you know, just that there has been this change.

17 And then Ms. Williams asked if there has been a
18 new application. And then Ms. Morrison said, no, it's
19 already been filed. It's already before the Board. We
20 don't believe we need a new recommendation provided the
21 change in location, height, and design for informational
22 purposes.

23 And the obviously at the top it says, she kind of
24 says, she's not quite sure what she's asking for. And then,
25 so I think there's important context that comes from 25

1 where Ms. Taylor, on behalf of MCO, MCA, Montgomery County
2 Alliance, puts MCA's comments, questions, and concerns in an
3 email to Ms. Williams. And the Tower chair, Ms. Williams
4 says that it has already been reviewed by them, and that the
5 hearing is upcoming.

6 So I guess why that's important is, obviously,
7 Ms. Williams knew that there were these minor changes, or we
8 believe minor changes. We sent that for informational
9 purposes. She did not put her on as an active, didn't say
10 it had to have a new review. And then she gave, her
11 response was saying that there is an upcoming hearing.

12 So again, our position is several fold here, but I
13 guess our starting position would be, we certainly, we
14 believe, and Mr. Kendrick is here as he stated, I believe
15 he's here to represent a bunch of organizations. He's taken
16 the time out of his day, even if he doesn't have particular
17 paperwork, I don't think we necessarily challenge whether he
18 is here as an individual or these organizations. I have
19 seen him out. We've had discussion. I know he's involved
20 with many of these groups.

21 We certainly would like to proceed forward today.
22 We believe this does show that the Tower Committee chair
23 who had the opportunity to say, we need to review this
24 again, did not say so.

25 As I said, there is also an independent finding

1 that must be made from the Board. And really if you get to
2 it here, we came to the Tower Committee, and their key job
3 is to say, do you need coverage, enhanced coverage here,
4 which they said we do. Are there any ways to co-located on
5 existing structures and not build a new structure, which
6 they said no, we can't.

7 So with this, we believe, again, our position is
8 that the minor change, their evaluation and final
9 determination, I don't see how it can change. We have not
10 put up any new sites here. We still have a great need for
11 service here.

12 MS. ROBESON: Well, as I read the Tower
13 Committee's role -- well, first let's argue whether we
14 should admit the emails. Mr. Kendrick, do you have any
15 objection to admitting these emails?

16 MR. KENDRICK: Well, I'm looking through what is
17 here, and I want to go through it. I know, email is, you
18 know, read from the bottom up, or the back to the front type
19 of thing. And what I'm looking at is a question from
20 Ms. Williams on --

21 MS. ROBESON: Which --

22 MR. KENDRICK: -- the 27th. This would be Exhibit
23 24 and the bottom of the first page, written to Hillorie.
24 Have you submitted a new application since there have been
25 changes? There is the question. Hillorie then responds,

1 just a few minutes later, with the assertion that there is
2 no need for any recommendation because we've provided a
3 change in location, height, and design information, for
4 information purposes, but that it's already before the Board
5 of Appeals.

6 There's no, this is like a qualitative assessment.

7 It doesn't really speak to the, you know, sort of factual
8 thousand feet relocation, and so forth. And so I do think
9 that Ms. Williams, at the top of Exhibit 24, raises a key
10 question. If it is already before the Board of Appeals, why
11 would we have it on the -- I'm sorry, what's that acronym
12 stand for, precisely? I should know.

13 MS. ROBESON: Tower Facility Coordinating Group.

14 MR. KENDRICK: Yes. Tower Facility Coordinating
15 Group. I call it Tower Committee instead of Tower Facility
16 Coordinating Group.

17 MS. ROBESON: Yes. Everyone does.

18 MR. KENDRICK: Okay. Coordinating Group. That's
19 nice to know, though. I'm writing it down here. And that
20 communication is basically between Ms. Williams and T-
21 Mobile.

22 Then we go to what in essence is Exhibit 22, but
23 in an email form, in Exhibit 25. That's if you go to the
24 back of the first page there, you'll see items. They should
25 be numbered one, two, three, four, but it's one, two, two,

1 three in the letter that was submitted subsequent in Exhibit
2 22 is actually numbered one, two, three, four. But those
3 are our key points.

4 And as I say, I'm here representing not just the
5 signatories that are on this, but also behind them, you
6 know, members of these organizations. And I can tell you,
7 as treasurer of Sugarloaf Citizen's Association, our
8 membership numbers close to 200. And that's just Sugarloaf
9 Citizen's Association.

10 This is not to say that all, I think the number
11 the other day was 188, all 188 would be in here today with
12 exactly the same expression. But I think in large measure,
13 that's the kind of thing that we're standing for here. And
14 again -- so then Caroline --

15 MS. ROBESON: No. Well the -- yes, go ahead.

16 MR. KENDRICK: -- Caroline received at the top of
17 Exhibit 25, an email from Ms. Williams that appears to have
18 some sort of a conclusive tone that is not really reflected
19 in the question that is raised at the top of Exhibit 24. And
20 I'm trying to figure out what happened in between the top of
21 Exhibit 24 and the top of Exhibit 25.

22 So I am actually reluctant to allow these, given,
23 you know, the nature that this is actually an argument that
24 is based both in the letter of the law and in the spirit.
25 And the spirit is where we have the greatest disparity. And

1 there are still elements that we argue are to the letter at
2 issue with the citing of this plan. So I just, does anyone
3 else, I mean, I'm willing to --

4 MS. ROBESON: No, no. I'm listening to you.

5 MR. KENDRICK: Yes.

6 MS. ROBESON: And you don't have to ask anyone
7 else.

8 MR. KENDRICK: To me there is, I won't say
9 assertive quality, but it's almost like a, you know, the
10 application for the site on Mount Ephraim Road has already
11 been reviewed, but over here, I don't know how we got from
12 the 2:30 p.m. April 27th to the 9:29 a.m. April 28th. I
13 don't know if there were other communications.

14 MS. ROBESON: Are these all the emails?

15 MR. HUGHES: Yes. And I guess our -- I appreciate
16 the indulgence of you and your office to allow us to pull
17 some of this information, I mean, I guess if we cut right to
18 it, our bottom line is, as I said, we'd really like to move
19 forward today. We think we have, and Mr. Kendrick is here.
20 He can certainly cross-examine our rate of frequency
21 engineer about need.

22 If there is a concern that there does need to be,
23 for some reason, the Tower Committee has to give another
24 recommendation, which again, I'm very, very confident it
25 will be, yes, there is a need here, and yes, this fills the

1 need, will enhance service, perhaps you would consider that
2 as something to leave the record open and we could bring it
3 back.

4 But you could have the testimony, the live
5 testimony today from the engineer, who he could cross-
6 examine.

7 MS. ROBESON: Well, this is my concern about doing
8 that. When I leave the record open to get additional
9 information, we have had cases where they want to come back
10 and they ask for cross-examination, to which they are
11 entitled. And so just leaving something open leads also to
12 the possibility that there is another hearing.

13 What I am willing, what I will do, these emails,
14 first of all, I'm going to move to admit them. I mean, I'm
15 going to admit them as Exhibits 24 and 25. They are somewhat
16 conclusory, in my opinion, simply because the way the
17 question is presented to the Tower Committee is somewhat
18 conclusory in nature, or pre-supposes the answer.

19 And I'm not sure as evidenced by Exhibit 24, I
20 don't think I'm following you if you are asking TFCG to do.

21 And I'm not sure that the question was fully understood.

22 One of their purposes is to provide technical
23 expertise, not simply on the need for the facility, but I
24 did see that they do consider siting issues. They are -- it
25 also states that they consider zoning standards, co-location

1 options, potential impacts on the surrounding area, site
2 suitability.

3 (Exhibit Nos. 24 and 25 were
4 admitted into evidence.)

5 MR. HUGHES: And, I apologize. You're right. But
6 I kind of disagree with that, too. But let's assume for a
7 second they do have -- so if you go from 150 foot monopole
8 to a shorter silo, and they were okay with the 150-foot
9 monopole that was closer to the road, I don't see how they
10 can have any issue with something shorter, and that is an
11 agricultural facility; because they already said the tower
12 was okay, proposed pole was okay.

13 MS. ROBESON: But I think part of their
14 recommendations, their recommendation was conditional,
15 correct?

16 MR. HUGHES: It always is, if you need a special
17 exception. It says, you have to go get your special
18 exception.

19 MS. ROBESON: Well, no, it was more than that
20 standard condition, if I'm recalling.

21 MR. HUGHES: Let me look at it. I apologize.

22 MS. ROBESON: I'll see if I can find it. I
23 believe it's an attachment to the staff report.

24 MR. HUGHES: Well, the notice of action, dated
25 March 10th, which is from the chair says -- where is it,

1 number two, item two -- do you need a copy of this?

2 MS. ROBESON: Well, if you could refer me to --

3 MR. HUGHES: It should, let me see if it's on the
4 exhibit list. And I have a copy for Mr. Kendrick too.

5 MS. ROBESON: I know I have read it.

6 MR. HUGHES: Right. It's this one right here.

7 MS. ROBESON: I can't locate it.

8 (Discussion off the record.)

9 MR. HUGHES: If I could approach and give you a
10 copy.

11 MS. ROBESON: Do you have the exhibit number for
12 this one?

13 MR. HUGHES: Yes, it should be number 8, although
14 it's actually dated March 10th, they took action on March
15 3rd.

16 (Discussion off the record.)

17 MS. ROBESON: I guess what I was reading was,
18 maybe it was the minutes.

19 MR. HUGHES: Perhaps, but the official
20 recommendation is, conditioned approval of an SC by the
21 Board, a uni-pole designed monopole is recommended by Rustic
22 Roads, and either approval of a monopole for less than three
23 carriers, if requested, or a monopole designed to
24 accommodate three carriers, and 10 as a ground approval,
25 which are, the last one is a requirement, a code

1 requirement.

2 MS. ROBESON: Right.

3 MR. HUGHES: So the uni-pole was, that's where the
4 antennas are hidden inside, but it's still a monopole.

5 MS. ROBESON: Right. I understand.

6 MR. HUGHES: So I guess our position is, if you
7 lower the height and you make it a silo, and they were okay
8 with this design, and move it further from the road --

9 MS. ROBESON: Okay. What I'll do is this. I
10 would feel, because it is a statutory mandate that we have
11 that, and I am a little uncomfortable whether that mandate's
12 been met just based on the emails, I have the ability to
13 refer it to the Tower Committee, and if they think that
14 there's no big deal about this, they can respond.

15 I'm going to hold the record open for their
16 response, but I'm also going to send a notice saying, if
17 anyone wants, I'd like to schedule a subsequent date, but in
18 the notice say if you don't raise an objection to this
19 within a certain time period, the date goes away.

20 I just, I'm a little uncomfortable just relying on
21 the email correspondence, since it is a mandate of the
22 statute. If the Tower Committee wants to come back and say,
23 we don't really care, you know, so be it. But I do feel
24 that it's a mandate in the statute. And I'm not sure it was
25 the exact situation was properly presented, but, you know,

1 they can tell me that. All right.

2 MR. HUGHES: Okay.

3 MS. ROBESON: Okay. And so we will let Mr. Jews
4 testify with the understanding that he may have to come back
5 at the subsequent date if I have any arguments, if anyone
6 wishes to cross-examine.

7 MR. HUGHES: Yes, ma'am. Thank you.

8 MS. ROBESON: All right. Mr. Hughes, I guess we
9 haven't gotten to opening arguments yet. Do you have
10 opening argument? Can you remember them after --

11 MR. HUGHES: I apologize. I was trying to think
12 of --

13 MS. ROBESON: I'm just teasing.

14 MR. HUGHES: -- in the interest of time, I
15 probably should not. I think we can -- would it possible to
16 potentially reserve a short closing if needed?

17 MS. ROBESON: Absolutely.

18 MR. HUGHES: Okay. I will do that, then. Okay.
19 I will call my first witness.

20 MS. ROBESON: Okay, wait. Mr. Kendrick, do you
21 want to say -- this is not your time for testimony. This is
22 just a time, if you have any brief point to make as an
23 opening statement. And an opening statement is something
24 just saying, this is what we are going to prove, or this is
25 our viewpoint. But it's not your time to testify. Do you

1 have an opening statement?

2 MR. KENDRICK: I'm trying to process the
3 qualification you just gave. I believe --

4 MS. ROBESON: I'm turning you into a lawyer from
5 zero to 200 miles per hour.

6 MR. HUGHES: He's doing a good job. Engineer to
7 lawyer.

8 MR. KENDRICK: Well, my opening statement would be
9 that we are here because we feel that though meetings and
10 discussions via email and otherwise were conducted, we are
11 concerned that the actual expressions that we've delivered
12 to the folks at T-Mobile and others have not actually been
13 taken under consideration.

14 And Mr. Carlisle can't help if his farm sits
15 between well traveled roads in the area and the view that
16 we're attempting to preserve. He's been there long before
17 cellular technology even existed. But we're just concerned
18 that there's been no consideration given to our efforts to
19 try and move this out of that view shed to somewhere else.

20 MS. ROBESON: All right. Thank you. Okay,
21 Mr. Hughes.

22 MR. HUGHES: Thank you.

23 MS. ROBESON: Why don't you proceed with your
24 first witness.

25 MR. HUGHES: Thank you very much. I would call

1 Mr. Carlisle.

2 MS. ROBESON: All right.

3 MR. HUGHES: It's okay if he sits on the end?

4 MS. ROBESON: Yes, as long as --

5 (Discussion off the record.)

6 MS. ROBESON: -- I see a mike over there.

7 (Discussion off the record.)

8 MR. HUGHES: Do you need to swear him first? I
9 apologize.

10 MS. ROBESON: I thought you were going to ask him.

11 Mr. Carlisle, can you raise your right hand, please?

12 (Witness sworn.)

13 MS. ROBESON: All right. Go ahead.

14 MR. HUGHES: Thank you.

15 DIRECT EXAMINATION

16 BY MR. HUGHES:

17 Q Can you state your full name, sir?

18 A James Maurice Carlisle.

19 Q And what is your address, Mr. Carlisle?

20 A 19700 Barnesville Road, Dickerson, Maryland.

21 Q How long have you lived at that address, about?

22 A I've lived there for 58 years.

23 Q Now, where is that in relation to the property
24 that T-Mobile is proposing here with you, 22370 Mount
25 Ephraim Road?

1 A It's probably about 500 feet. I live at the first
2 house on Barnesville Road, and it's to Mount Ephraim Road,
3 right, and the farm is right at Mount Ephraim Road.

4 Q Okay, so it's correct that 22730 Mount Ephraim,
5 you own that property as well?

6 A Yes, sir.

7 Q And you just live, pretty much, next door?

8 A Yes, sir.

9 Q Okay. And how long has your family owned 22730
10 Mount Ephraim?

11 A My father bought it, I think in 1948, and he died
12 in '58, and then it went to my mother. And then my mother
13 dies in 1991, and I purchased it from the estate in 1991.

14 Q And can you tell us, just briefly, historically
15 and now, how is the property used?

16 A Well, when my father bought it, we farmed two or
17 three farms in the area. In fact, my father was born right
18 up the road, and so was I born right up the road within 500
19 feet of this property. And he farmed there all his life,
20 and then I farmed there. And after my father died, I run
21 cattle on the farm. He run cattle. We had a dairy and beef
22 operation. And I ran cattle on the farm.

23 And in the later years, I have rented the farm,
24 and it has been used continuously since 1958 in a farming
25 operation. It has never ever been out of a farming

1 operation in all those years. And now, it's mainly grain,
2 corn, and beans farm.

3 Q And you, as the owner of the property, you and
4 T-Mobile applied for this together, per the County rules,
5 is that correct?

6 A Yes.

7 Q And obviously, since you have an agreement with
8 T-Mobile, and you signed as a co-applicant, you're
9 supportive of this application, is that correct?

10 A Yes, I am.

11 Q How did you, how did this come about, reaching an
12 agreement with T-Mobile?

13 A T-Mobile approached me with the idea of installing
14 a tower on the property. And I was in agreement because in
15 our area there is a lot of dropped calls on our
16 communications on cell phones. So that was good. And also
17 it helped me sustain the property by the payments from
18 T-Mobile, if they do build the tower.

19 Q Yes, sir. Thank you. What feedback, if any, have
20 you received from some of your neighbors in the area?

21 A My neighbors, I have heard, none of them have come
22 to me and opposed it, other than the closest neighbor,
23 Donovans, they, when we had proposed it out next to the
24 road, they didn't too much like that area, and so T-Mobile
25 accommodated them and moved it back approximately 1,000

1 feet. And as far as I know, they have no problems now.

2 Q Sorry.

3 A And Mr. Johnson, who is a neighbor adjoining me,
4 gave me a letter to the effect that he --

5 Q Can I show you? Let me show this to Mr. Kendrick
6 first and then show you this letter and see if you can
7 identify it? And I apologize, this he brought today, so I
8 don't have additional copies.

9 MR. KENDRICK: I'm concerned. I don't oppose cell
10 phone tower join my property. Who is this?

11 THE WITNESS: Johnson. Arthur Johnson.

12 MR. KENDRICK: Okay.

13 MR. HUGHES: Thank you. I'm going to show you
14 this when we get to this.

15 BY MR. HUGHES:

16 Q So are you able to identify this letter, sir?

17 A Yes, this is Arthur Johnson.

18 Q And Mr. Johnson, what is his position regarding
19 the cell tower? What did he tell you? Is he okay with
20 this?

21 A He's okay with it. He's a farmer, and he lives on
22 the farm, this farm at 22520 Mount Ephraim Road.

23 Q Okay.

24 A He's a dairy farmer.

25 Q Is that close to your farm?

1 A It joins my farm.

2 Q Okay.

3 MS. ROBESON: I will mark this as 26. Do you
4 have, Mr. Kendrick, do you have an objection?

5 (Exhibit No. 26 was
6 marked for identification.)

7 MR. KENDRICK: Well, it stands to reason,
8 Mr. Johnson, if I understand correctly, is a resident in a
9 structure that is actually on the subject property, is that
10 correct?

11 THE WITNESS: Not on my property, no. He's on the
12 adjoining property.

13 MR. KENDRICK: So what is his proximity to this
14 property? Is he east, west, north, south?

15 THE WITNESS: This is Arthur's house, Arthur
16 Johnson. This is in the record. We haven't talked about
17 it. Here's the lot of Mr. Johnson.

18 MR. KENDRICK: So he's the owner of this property?

19 THE WITNESS: He's the owner and operates a dairy
20 farm there.

21 BY MR. HUGHES:

22 Q Okay. And if you know, is it true he owns, his
23 farm is about 100 acres. Is that true?

24 A Yes. I think it's about 100 acres.

25 MR. KENDRICK: Just for the record I want to note,

1 this is another property that is to the north and perhaps a
2 little bit west, but north of Mount Ephraim Road, between
3 Mount Ephraim Road and Sugarloaf Mountain.

4 MS. ROBESON: Okay. Just so you know, when I ask
5 you if there is an objection, the things that go on --

6 MR. KENDRICK: Please, yes.

7 MS. ROBESON: -- one is, if you have any reason to
8 believe this isn't what it appears to be, you can still ask
9 those types of questions on cross-examination if you have
10 any concerns that this doesn't prove what they're trying to
11 prove. Okay. I have one question. This is undated. Do
12 you know --

13 THE WITNESS: He did it yesterday.

14 MS. ROBESON: He did it yesterday? Okay.

15 THE WITNESS: Yeah, he didn't put a date on it.

16 MS. ROBESON: Okay. Then I am going to admit it
17 as Exhibit 26.

18 (Exhibit No. 26 was
19 admitted into evidence.)

20 THE WITNESS: Yes, ma'am.

21 MS. ROBESON: Okay. Go ahead, Mr. Hughes.

22 MR. HUGHES: Thank you. And Mr. Kendrick has
23 already seen this other letter, is that correct, sir, this
24 one, I showed it to you? I don't have extra copies.

25 MR. KENDRICK: Gary Burdette, 22711, May 15. Just

1 now, yes.

2 MR. HUGHES: I'm sorry, I thought you --

3 MR. KENDRICK: That's all right. I was trying to
4 make some notes about it. Gary Burdette.

5 MR. HUGHES: Do you want to look at it first?

6 MR. KENDRICK: 22711 Mount Ephraim.

7 BY MR. HUGHES:

8 Q Did, do you have another neighbor named
9 Mr. Burdette?

10 A No, that's Burdette. Mr. Burdette, I asked him if
11 he had any objections, and he had no objections. And he
12 wrote that letter also.

13 Q And where does he live in relation to your farm?

14 A He lives about 400 feet from the farm on Mount
15 Ephraim Road. He overlooks the farm.

16 Q Okay. Can I show --

17 MS. ROBESON: Okay. I'm mark that as Exhibit 27.

18 (Exhibit No. 27 was
19 marked for identification.)

20 BY MR. HUGHES:

21 Q Is this the letter, in fact, that Mr. Burdette
22 gave to you, sir? It's dated May 15th, 2011?

23 A Yes.

24 Q Okay.

25 MS. ROBESON: Mr. Kendrick, do you have any

1 objections to this? Do you think that it is real,
2 basically? Do you have any reason to doubt it's
3 authenticity?

4 MR. KENDRICK: I don't have any reason to doubt
5 its authenticity, nor to, you know, accept its authenticity.
6 I'm not here, I mean, I don't doubt that these letters were
7 obtained from real property owners in the near vicinity. I
8 don't know anything about the relationship, motivation, or
9 lack thereof. So I can't speculate as to that. I'm not
10 going to question their authenticity at this point.

11 MS. ROBESON: All right.

12 MR. KENDRICK: I don't believe that that would be
13 -- I think my interactions with T-Mobile previous to this,
14 don't really suggest that there would be any reason for them
15 to fabricate --

16 MS. ROBESON: Okay.

17 MR. KENDRICK: -- a couple of letters from
18 adjoining neighbors.

19 MS. ROBESON: All right.

20 (Exhibit No. 27 was
21 admitted into evidence.)

22 BY MR. HUGHES:

23 Q And did you also have another neighbor, Mr. Baker,
24 who you talked to about this?

25 A Paul.

1 Q What was his position, sir?

2 A Paul Baker, who owns property adjoining my
3 property, and his property goes all the way to Route 28, of
4 which he lives on the property. And I talked to him, and I
5 was to get a letter from him, but he was working last night
6 and didn't have time to give me the letter. But he had no
7 objections to the tower either.

8 Q Thank you, sir. Is it correct that his property
9 is kind of in the west corner of your property, on top of
10 it?

11 A Yes. Yes.

12 Q And do you know if it's around 66 acres or so?

13 A Probably about 66, yes.

14 Q All right. Thank you, sir. Mr. Carlisle, if this
15 is approved, what would it mean to your family and to this
16 property?

17 A Of course, you know, it helps with additional
18 income to sustain the property, and keep our bills paid.

19 MR. HUGHES: All right. Thank you very much. No
20 further questions.

21 MS. ROBESON: Okay. Mr. Kendrick, do you have any
22 questions?

23 MR. KENDRICK: I do.

24 CROSS-EXAMINATION

25 BY MR. KENDRICK:

1 Q My question to you, Mr. Carlisle is, going back to
2 the genesis of this proposal, if I understand correctly,
3 T-Mobile came to you, is that correct?

4 A Yes.

5 Q Okay. So when you were first approached, were you
6 approached in person, by telephone, in writing? How was the
7 first, how was this initiated, and approximately when?

8 A It's been over a year ago. I'm not sure when.
9 It's been over a year ago.

10 Q Okay.

11 A It kind of went on a little bit because the
12 surveyor had questioned whether I had access to Mount
13 Ephraim Road. And in the survey, it was proven, the farm is
14 on a short right-of-way, not right-of-way, a short driveway
15 from Mount Ephraim Road, and that was proven that I owned
16 that. They were concerned about access to service it and
17 all.

18 Q Okay. So that was one aspect they were concerned
19 with, the access, which I understand would be essential to
20 any successful deployment.

21 A Sure.

22 Q My next question is, financially, what is it you
23 stand to benefit in terms of an up front --

24 MR. HUGHES: Objection.

25 BY MR. KENDRICK:

1 Q -- remuneration and monthly -- I'm just --

2 MS. ROBESON: Okay. We're only looking at -- you
3 can, if you're -- okay. We're only looking at whether he
4 meets the conditions of approval.

5 MR. KENDRICK: Okay. All right. I withdraw the
6 question, but I think, if I may, I believe Mr. Carlisle has
7 had a successful professional career in the area farming,
8 and I believe the well and septic work that he does as well.
9 And my only question is in terms of --

10 MS. ROBESON: Financial, does he need?

11 MR. KENDRICK: -- the need, the need?

12 MS. ROBESON: Okay. Well, he did open it up, but
13 he did open that issue up, but I think that we really need
14 to --

15 MR. KENDRICK: All right.

16 MS. ROBESON: -- this hearing to stay focused on
17 the conditions of approval.

18 MR. KENDRICK: Let me bring the focus back where
19 you tell me I need to stay. Okay.

20 MS. ROBESON: It's the link, the criteria.

21 MR. KENDRICK: Okay. I have a feeling that any
22 additional questions I might have would actually need to be
23 directed to T-Mobile and possibly to their engineering as
24 well.

25 MS. ROBESON: That's fine. That's fine. You don't

1 have to -- there is no mandate that you ask a witness
2 questions.

3 MR. KENDRICK: Okay. All right.

4 MS. ROBESON: You're doing excellent.

5 MR. HUGHES: He sounds like an attorney already.

6 MR. KENDRICK: All right. Well, thank you. I
7 don't think I have any further questions for Mr. Carlisle.

8 MS. ROBESON: Okay. Thank you.

9 MR. HUGHES: And I apologize, Ms. Robeson. Before
10 I go to my next witness, I did forget to submit the
11 affidavit at the beginning.

12 MS. ROBESON: Of posting. All right. That will
13 be --

14 MR. HUGHES: Would you like me to submit that now
15 or bring it through the witness who signed it, when she
16 comes?

17 MS. ROBESON: Okay. It's not Ms. Morrison?

18 MR. HUGHES: It is Ms. Morrison.

19 MS. ROBESON: It is. We can bring it in when she
20 comes.

21 MR. HUGHES: Okay. Thank you for your time.

22 MS. ROBESON: Is she your next witness?

23 MR. HUGHES: No. I'm going to have one more
24 before her.

25 MS. ROBESON: Okay.

1 MR. HUGHES: Thank you, Mr. Carlisle. You can
2 take a seat. I'm sorry. The next witness would be
3 Mr. Michael McGarity. Is that 27?

4 MS. ROBESON: I have 28. (Discussion off
5 the record.)

6 MS. ROBESON: Mr. McGarity, can you raise your
7 hand? Thank you.

8 (Witness sworn.)

9 MS. ROBESON: Okay. I haven't, do you want this
10 marked as 28 now, or do you want to wait for --

11 MR. HUGHES: If we could mark it now, that would
12 be appreciated. Thank you. Go ahead.

13 (Exhibit No. 28 was
14 marked for identification.)

15 DIRECT EXAMINATION

16 BY MR. HUGHES:

17 Q Can you name your full name, sir?

18 A Michael McGarity.

19 Q And who do you work for?

20 A Daft, McCune, Walker, Incorporated.

21 Q And how long have you worked for them?

22 A 13 years.

23 Q What type of work does Daft, McCune, Walker do?

24 A Daft, McCune, Walker is a multi-disciplined land
25 development consultant which also includes wireless

1 consulting services in the civil engineering, surveying, and
2 site planning areas.

3 Q And what type of work do you do for them?

4 A I am the director of wireless services for Daft,
5 McCune, Walker.

6 Q And in your 13 years, what work have you done
7 during those 13 years? What have you focused on?

8 A Providing engineering consulting services to many
9 of the telecommunications companies that are out there
10 today.

11 Q Okay. So if this is a site, how many sites like
12 this have you worked on in your 13 years?

13 A You mean raw land sites such as this, and co-
14 location sites that just need tower sites, like well over
15 1,000.

16 Q Okay. And you've worked on this site for T-
17 Mobile, is that correct?

18 A Yes, that's correct.

19 Q Can you recognize this document, Mr. McGarity?

20 A Yes.

21 Q Can you hold this?

22 A Yes. This is my company resume.

23 Q And have you ever testified before in hearings
24 such as the one you're at today?

25 A Yes, I have.

1 Q Have you testified in this jurisdiction before?

2 A Yes, I have.

3 Q Have you testified in other jurisdictions in
4 Maryland?

5 A Yes, I have.

6 Q Can you name a few of them?

7 A Sure. Harford, Carroll, Howard, Baltimore.

8 Q Okay.

9 A Montgomery.

10 Q And have you ever been recognized as an expert in
11 any of these jurisdictions?

12 A Yes.

13 Q Have you ever been recognized as an expert in this
14 jurisdiction?

15 A I believe I have. Yes.

16 MR. HUGHES: Okay. Ms. Robeson, I'd like to offer
17 him as an expert in designing of civil engineering design
18 and of cell sites or telecommunications facilities.

19 MS. ROBESON: Okay. Mr. Kendrick, do you have any
20 reason to think that he's not an expert in this field?

21 MR. KENDRICK: I have no reason to think that he's
22 not an expert in this field. I will have some questions.

23 MS. ROBESON: That's fine. Okay. I will qualify
24 him, so continue.

25 (Discussion off the record.)

1 BY MR. HUGHES:

2 Q Mr. McGarity, can you explain --

3 A Yes.

4 Q -- to us what is being proposed by T-Mobile?

5 Explain what the proposal includes, how they would get to
6 it, and what it's going to look like?

7 A Sure.

8 MR. HUGHES: I would just offer this.

9 MS. ROBESON: Thank you. I'm going to mark this
10 as Exhibit 30.

11 MR. HUGHES: Would 29 then be his resume?

12 MS. ROBESON: 29 is his resume. 30 is the small
13 version. And can you mark that as Exhibit -- yes. Yes,
14 just mark it as one exhibit, Exhibit 31, and -- thank you.

15 (Exhibit No. 29-31 were
16 marked for identification
17 and admitted into evidence.)

18 THE WITNESS: This does call for some special
19 reading glasses.

20 MS. ROBESON: Sad to say.

21 BY MR. HUGHES:

22 Q And if you need to, you can stand up there.

23 A I might have to. I have a second larger set here.

24 MR. KENDRICK: Well, the thing that I like about
25 what was just submitted, I say like, is the more detailed

1 topography, because I think that's the primary focus in
2 civil engineering, and I will have some questions regarding
3 that.

4 BY MR. HUGHES:

5 Q Okay. Mr. McGarity, I'm sorry, go ahead and tell
6 us a little bit about this plan, please?

7 A T-Mobile proposed to construct a 127-foot silo for
8 the purposes of providing telecommunications from the
9 subject property, which is located off Mount Ephraim Road.
10 The subject property is a little over 92 acres. As
11 Mr. Carlisle said, it's used for farming activities.

12 Q Can you speak up just a little bit more.

13 A Sorry. Yes. The proposed location for the
14 telecom facility is fairly central to the center of the
15 property. It's approximately 1,300 feet from Mount Ephraim
16 Road, and is accessed through a driveway from Mount Ephraim
17 Road coming into the northwest, so along a gravel access
18 road, into the property up to a farm field area.

19 The proposed location is surrounded by -- the
20 proposed location does have a large amount of trees, wooded
21 areas surrounding it. Again, the location is central to the
22 property. The proposed compound installation would be a 50
23 by 50 with a fence, board on board compound.

24 Q Would it help to switch to the next page for that?

25 A Sure. Actually, I'll back up.

1 Q Okay.

2 A Before we go to the next page --

3 Q Yes.

4 A -- I'd like to talk about the setback requirements
5 for telecommunications facilities and towers in Montgomery
6 County.

7 Q What are the setbacks in this case, sir?

8 A The current setbacks from the proposed location,
9 from the front property line is 830 feet, from the west
10 property line, 598 feet, from the east property line is 770
11 feet.

12 MS. ROBESON: Excuse me.

13 MR. KENDRICK: I apologize.

14 MS. ROBESON: Okay. You can't talk to the court
15 reporter.

16 MR. KENDRICK: All I'm trying to do is get some
17 paper.

18 MS. ROBESON: You need a sheet of paper?

19 MR. KENDRICK: Is there a chance I could get it?

20 MR. HUGHES: Yes.

21 MR. KENDRICK: I am just remiss for not bringing a
22 pen. I'm simply hampered.

23 MS. ROBESON: Do you have a pen while we're --

24 MR. KENDRICK: I borrowed a pen. I just, I left
25 it in my car.

1 MS. ROBESON: You're fine. If you need more
2 paper, just stop us.

3 MR. KENDRICK: That's all I was trying to do, and
4 I apologize. Okay. I'm good.

5 MS. ROBESON: Okay. I'm sorry to interrupt.

6 MR. KENDRICK: I'm sorry to interrupt. My fault.
7 Repeat the setbacks.

8 BY MR. HUGHES:

9 Q Yes, please.

10 A The proposed silo location is situated such that
11 it's 830 feet from the front property line, 598 from the
12 west property line, 770 feet from the east property line,
13 and 1,529 feet from the rear property line to the north.

14 The setback requirements for Montgomery County
15 state that the proposed structure must meet a setback of one
16 to one, meaning one foot of setback for every foot of height
17 of structure. And it also requires that it be a minimum of
18 300 feet from any off-site dwelling, given that the shortest
19 distance from the nearest property line is almost 600 feet,
20 it more than meets those requirements.

21 Q Thank you. Can you also describe a little bit in
22 detail the ground compound?

23 A Sure. As I mentioned, the proposed
24 telecommunications compound will be accessed off an existing
25 gravel drive with a small extension of proposed access

1 gravel drive, to a 50 by 50 fenced compound. The compound
2 fencing will be board on board. You won't be able to see
3 through it. And if necessary, also have a row of
4 landscaping surrounding it on three sides.

5 The compound inside will consist of 10 by 20
6 concrete pad, T-Mobile's ground based equipment, a 127-foot
7 silo, that can range anywhere from 16 to 18 feet in
8 diameter, as well as a few utility company cabinets that are
9 also inside the compound.

10 Q And the antennas, they are being proposed on the
11 outside, and painted to blend in with the silo, is that
12 correct?

13 A That's correct.

14 Q And do you know approximately the size of the
15 antennas, if you do?

16 A The antennas are approximately five feet in
17 height, about 10 to 12 inches in width, possibly three or
18 four inches in depth.

19 Q So they will be that size, five by about two,
20 flush mounted type and painted --

21 A Five by one.

22 Q Five by one, I'm sorry. And they'll be at least
23 600 feet away from the nearest property line, is that
24 correct?

25 A 598 feet, I believe, was the distance to the east

1 property line.

2 Q Okay. I'm going to ask you if you are able to
3 identify this aerial photo? Do you recognize this?

4 MS. ROBESON: Can you please mark that as Exhibit,
5 the large one as Exhibit 32, and I'll mark the small one as
6 Exhibit 33?

7 (Exhibit No. 32-33 were
8 marked for identification.)

9 MR. KENDRICK: I'm sorry, what? I lost my
10 exhibits. So 31 is?

11 MS. ROBESON: 31 is the large aerial photograph.
12 32 is the small one that I have.

13 MR. KENDRICK: Oh, I see. Large aerial. I'm
14 sorry.

15 MS. ROBESON: I'm sorry. No.

16 MR. HUGHES: It's 32.

17 MR. KENDRICK: 32?

18 MS. ROBESON: 32 is that one.

19 MR. HUGHES: Yes.

20 MS. ROBESON: 33 is the small one.

21 MR. KENDRICK: What was 31?

22 MR. HUGHES: The large full size site plan that we
23 showed up there.

24 MR. KENDRICK: Right. Okay. All right.

25 MR. HUGHES: Ms. Robeson, do I need to ask that 30

1 and 31 be moved in, or are they in? I'm sorry?

2 MS. ROBESON: They are in.

3 MR. HUGHES: Okay. Thank you.

4 MS. ROBESON: Now, Mr. Kendrick, you have the
5 right to object to these if you feel like there is problems
6 with them. If substantively you think they don't meet the,
7 don't prove the case, you can ask that on cross-examination.

8 MR. KENDRICK: I actually, not knowing that it
9 might be beneficial for me to bring things, I'm actually
10 welcoming the information they're presenting, because I
11 think it's actually going to be beneficial --

12 MS. ROBESON: Okay.

13 MR. KENDRICK: -- with regard to questions that I
14 have and references back to my own information.

15 MS. ROBESON: Okay.

16 MR. KENDRICK: I have no objections. They seem
17 factual. I'm simply trying, at this point, to correlate
18 what I see in the aerial image with the site plan.

19 MS. ROBESON: I understand.

20 MR. KENDRICK: So for me --

21 MR. HUGHES: And I am going to ask him some
22 questions that might help with that.

23 MR. KENDRICK: -- 33 and 30 -- go ahead.

24 MS. ROBESON: Okay. Well then I'm going to admit
25 32 and 33.

1 (Exhibit No. 32-33 were
2 admitted into evidence.)

3 BY MR. HUGHES:

4 Q Thank you. Mr. McGarity, what is this photo?
5 Generally, what is it?

6 A This aerial photo is an aerial photo of Mr.
7 Carlisle's property, as well as some of the adjoining area.

8 Q And where was this obtained?

9 A From Google Maps.

10 Q And does it have a date on it, in the corner
11 somewhere?

12 A Yes. It says, imagery date, 1-31-2008.

13 Q Okay. Have you been out to the site?

14 A I have.

15 Q And does this represent roughly what it looks like
16 today?

17 A To the best of my knowledge.

18 Q Okay. And could you point, could you walk us
19 through where the property, the access road is, and where
20 we're proposing to have the telecommunications facility?

21 A Sure. This is now Ephraim Road. Right here is
22 the existing driveway. This is where the entrance, access
23 to the site would be. Come into the property along the
24 driveway, through the wooded area here. The driveway does
25 continue, I believe, back to a house, but there is also an

1 extension off the driveway right here, another gravel
2 driveway up to a gravel, a small gravel parking area and a
3 mobile home.

4 Q Can you put a mark where roughly this is, this
5 site would be going?

6 A Sure.

7 Q You're putting a red, what are you doing, a red X?

8 A A red X.

9 Q Thank you. And you had mentioned a little bit
10 earlier that there were a fair amount of trees in and around
11 the property.

12 A Yes.

13 Q Can you just point out a few of those tree
14 groupings or areas you were talking about?

15 A Yes. As you can see, there's a fairly large
16 wooded area that surrounds most of this open farm field here
17 to the north, east, south, and pretty much most of the west,
18 as well.

19 Q So is it fair to say that it's going to be topped
20 up somewhat close to the tree grouping that's a little bit
21 to the north of it, or northwest?

22 A Somewhat, yes. I believe that it's approximately
23 150 feet or so off that tree line on the north.

24 Q From a vantage point to the south, looking, it may
25 look like it's somewhat close to the trees, is that correct?

1 A Yes.

2 Q And is it also true that there is a tree grouping
3 to the south of it, that perhaps if you are on the road
4 might screen some of the facility?

5 A I would assume so.

6 Q Okay. Mr. McGarity, I think you already said
7 this, but so the code requirements for setbacks are met in
8 that there is no off-site dwelling within 300 feet, is that
9 correct?

10 A That's correct.

11 Q And it certainly meets the one for one setbacks on
12 the subject property too, is that correct?

13 A That's correct.

14 Q Okay. Is it true -- are you able to estimate the
15 approximate height of some of those mature trees in and
16 around the area of the property, if you can?

17 A From my visit out there, as well as someone else
18 from my firm, our estimate would be that they are 60-70 feet
19 in height.

20 Q Okay.

21 A Would be the average height of the tree stand out
22 here.

23 MR. HUGHES: Those would be my questions for
24 Mr. McGarity on direct. Thank you.

25 MS. ROBESON: Okay. Mr. Kendrick, now it's time

1 for your questions.

2 MR. KENDRICK: Okay.

3 CROSS-EXAMINATION

4 BY MR. KENDRICK:

5 Q Pardon me, it's Mr. McGarity, correct?

6 A Correct.

7 Q Okay. I'm sorry.

8 MS. ROBESON: You don't have to stand --

9 MR. KENDRICK: Oh, all right.

10 MS. ROBESON: -- unless you want to.

11 MR. KENDRICK: I kind of like standing. It kind
12 of helps.

13 MS. ROBESON: Okay. Go ahead.

14 BY MR. KENDRICK:

15 Q Does the highest peak of Sugarloaf Mountain show
16 in 30 and 31, Exhibits 30 and 31, the site plan?

17 A I don't know. I'll bring up the site plan again.

18 Q Okay.

19 MR. HUGHES: Can we move this?

20 (Discussion off the record.)

21 MR. KENDRICK: I couldn't see the topography from
22 over there. I don't believe it does, to be honest. I
23 believe that the peak --

24 MS. ROBESON: Okay. This is -- I hate to put the
25 lawyer thing on you.

1 MR. KENDRICK: Okay.

2 MS. ROBESON: This is not your turn to tell me

3 things.

4 MR. KENDRICK: I'm asking a question.

5 MS. ROBESON: Okay.

6 MR. KENDRICK: I'm going to stick to my questions.

7 MS. ROBESON: All right.

8 MR. KENDRICK: So my question can't be answered by

9 this individual, so I'm going to continue to my next

10 question.

11 MS. ROBESON: Okay.

12 BY MR. KENDRICK:

13 Q What is the elevation of the proposed pad site?

14 A Ground elevation is 424 feet, the MSL, which is

15 above mean sea level.

16 Q And what is the height of the silo proposed?

17 A The height of the silo --

18 Q Top of the silo?

19 A -- is 127 feet.

20 MS. ROBESON: Mr. McGarity, can you speak up a

21 little bit. I'm having a little trouble hearing you.

22 MR. HUGHES: We've got the A/C going.

23 THE WITNESS: The proposed silo height is 127

24 feet.

25 BY MR. KENDRICK:

1 Q So what is then the elevation of the top of the
2 silo?

3 A The total elevation for the top of the proposed
4 silo would be 551 feet.

5 Q Now, specifically with regard to the civil
6 engineering requirements for a site like this one and any
7 other of the 1,000 or so that you've been involved in in the
8 last 13 years, is there anywhere within a three-quarter mile
9 radius of this location that would not also provide suitable
10 infrastructure from a civil engineering standpoint, i.e.,
11 drainage and access and so forth, without regard to the need
12 for egress, the driveway, et cetera. I'm just wondering if
13 there are any specific requirements -- I've got to frame
14 this as a question.

15 Are there any unique requirements, other than
16 egress, that couldn't be served elsewhere within a three-
17 quarter mile radius of this location?

18 A I don't know. I've only looked at two locations
19 that were presented before me from T-Mobile, which initially
20 was up closer to Mount Ephraim Road and then the current
21 proposed location.

22 Q And were both of those locations on the Carlisle
23 property?

24 A Yes, they were.

25 Q So then my next question, were you never presented

1 with a location on the Savage Dairy property, south of Mount
2 Ephraim?

3 A I was not, no.

4 Q You were not. Okay. What are the basic criteria
5 that you look for, in just a short comment, what are the
6 basic criteria you look for --

7 A For a suitable site?

8 Q -- for a suitable site?

9 A Well, you mentioned access is number one. And I
10 usually do this in concurrence with T-Mobile's construction
11 manager, constructability. Constructability is looked at.
12 How difficult, how flat is the ground? What's the grade of
13 the ground? You mentioned drainage. That's also taken into
14 consideration. Distance from nearest public utilities,
15 meaning telephone and electric service, as well as
16 coordination with the property owners. They have their
17 input as well.

18 Q Okay. This leads me to a few follow-up questions.

19 A If I may.

20 Q Oh, yes. Please.

21 A Another important factor is always, especially
22 with a new structure, is the setback issue.

23 Q Explain what you mean?

24 A Meaning that it must meet the setback requirements
25 from the property line. So when I am looking at a potential

1 site, I need to make sure that we're going to meet the
2 setback requirement. It's a very important criteria.

3 Q Okay. All right. Of these 1,000 or so projects,
4 have you ever been involved in a plan that was approved and
5 implemented, and then later proved to have any issues with
6 regard to these criteria, constructability, drainage,
7 coordination with owners, property setbacks? Have any of
8 these things sort of crept up after the implementation?
9 Have there been any issues?

10 A I'm sure there have been some construction issues
11 that were, that came up from unforeseen issues, but very
12 minimal.

13 Q Okay.

14 A I can't think of a specific. I apologize.

15 Q That's fine. All right. Okay. I don't think I
16 have any further questions for you at this time. Let me ask
17 this question. Have you visited the site?

18 A I have.

19 Q And how many times have you been there?

20 A I have been there twice.

21 Q And on each of these visits have you noticed and
22 taken notice of the view shed of Sugarloaf Mountain from
23 both the road that approaches the driveway, the proposed
24 access, and as you proceed along that driveway?

25 A I have not. I have not.

1 Q Okay. I have no further questions.

2 MS. ROBESON: You get an A.

3 MR. KENDRICK: Thank you.

4 MS. ROBESON: Are you an engineer?

5 MR. KENDRICK: I have a degree in electrical

6 engineering. I used to work in information technology.

7 MS. ROBESON: Okay. Any redirect?

8 MR. HUGHES: No. Thank you, though.

9 MS. ROBESON: You're next witness.

10 MR. HUGHES: I would call Ms. Morrison. I was

11 wondering if I could ask for a slight indulgence or favor,

12 also again from the participants here. I'm pretty confident

13 I can get through Ms. Morrison. She has a, not a serious,

14 but a medical condition that she is going to have to take a

15 flight to a special seminar that's down in Florida. So I'm

16 hoping to get her done by 1:00, if at all possible. And I

17 don't see any reason why it wouldn't happen, but I just

18 wanted to check with you.

19 MS. ROBESON: No, I understand.

20 MR. KENDRICK: Okay.

21 MR. HUGHES: Thank you. Ms. Morrison.

22 MS. ROBESON: We will not, if you are asking,

23 don't break for lunch, we're not going to break for lunch.

24 MR. HUGHES: Okay.

25 MS. ROBESON: Have to give him time to ask

1 questions, but we're not going to break for lunch. That's
2 fine.

3 MR. HUGHES: Thank you. Do you need to swear her
4 first?

5 MS. ROBESON: Oh, yes. Please raise your right
6 hand.

7 (Witness sworn.)

8 MS. ROBESON: Go ahead, Mr. Hughes.

9 DIRECT EXAMINATION

10 BY MR. HUGHES:

11 Q Your full name, please?

12 A Hillorie Morrison.

13 Q And your profession?

14 A I'm a consultant for Network Building and
15 Consulting, background in planning and in law.

16 Q So how long have you been working --

17 MS. ROBESON: Mr. Hughes, I know that she's
18 testified as an expert. What is her area of expertise that
19 you're trying to qualify her in?

20 MR. HUGHES: As an expert in planning, land use
21 planning and telecommunications zoning.

22 MS. ROBESON: Okay. Mr. Kendrick, do you have --
23 she has testified before us before as an expert in that
24 field. Do you have any reason to question why she's not an
25 expert?

1 MR. KENDRICK: I'll be unequivocal and say no.

2 MS. ROBESON: Okay. I'm going to --

3 MR. KENDRICK: I mean, she was present at the
4 public meetings that were coordinated to try and create a
5 discourse.

6 MS. ROBESON: Okay. I am going to mark her resume
7 as Exhibit 34, and I'm going to qualify her as an expert in
8 those areas.

9 (Exhibit No. 34 was
10 marked for identification
11 and admitted into evidence.)

12 MR. HUGHES: Thank you very much.

13 MS. ROBESON: Okay. Go ahead, Mr. Hughes.

14 BY MR. HUGHES:

15 Q Ms. Morrison, there was a document provided
16 earlier, an affidavit of posting. Is it true that you
17 signed that document, and the document is accurate?

18 A I did.

19 Q And that is Exhibit 28?

20 MR. HUGHES: 28, yes, ma'am.

21 MS. ROBESON: Do you have any objection,
22 Mr. Kendrick?

23 MR. KENDRICK: No, I think I already accepted that
24 affidavit.

25 MS. ROBESON: Okay.

1 (Exhibit No. 28 was
2 admitted into evidence.)

3 BY MR. HUGHES:

4 Q Ms. Morrison, I'm going to ask if you can identify
5 some photographs quickly for us. They're already in the
6 record, but can you tell us, and I do have a copy for
7 Mr. Kendrick. I think, yes, I believe I have a copy.

8 (Discussion off the record.)

9 MR. HUGHES: I have one copy.

10 MS. ROBESON: That's fine.

11 MR. HUGHES: Can I give it to Mr. Kendrick?

12 MS. ROBESON: I have some. Are these what's
13 already in our file?

14 MR. HUGHES: They are. Yes, ma'am.

15 MS. ROBESON: All right. I have those.

16 (Discussion off the record.)

17 BY MR. HUGHES:

18 Q Ms. Morrison, can you briefly explain what -- it
19 looks like there's a map in the middle. Can you tell us
20 what that map is?

21 A Yes. This is a map. We conducted a visual test
22 for this site, as we do for all of our sites, and the visual
23 test consists of raising a balloon to the height of the
24 tower, or in this case a silo, at the proposed location
25 where it will be built. That's the star where it's the

1 site. And then what we do is drive around public roads and
2 take pictures from various vantage points.

3 This visual test was conducted on March 29th. We
4 invited Park and Planning staff.

5 MS. ROBESON: Of what year?

6 THE WITNESS: Of this year. There was a second
7 balloon test. The first balloon test was conducted at the
8 original site. It was closer to the road.

9 Telling more of the story here, we met with the
10 community on February 17. They were very concerned that the
11 location in front, or using this parcel in general. They
12 suggested that we consider moving the location further back
13 onto the Carlisle property.

14 BY MR. HUGHES:

15 Q At least some people suggested that.

16 A Some people suggested that.

17 MS. ROBESON: Do you have a direction, when you
18 say further back --

19 THE WITNESS: Further to the --

20 MS. ROBESON: -- was that to the southeast?

21 THE WITNESS: It's more like the southwest.

22 BY MR. HUGHES:

23 Q Here's the -- here's north. So that is where?

24 A North is here. True south is here.

25 MS. ROBESON: Away from Mount Ephraim Road.

1 THE WITNESS: Away from Mount Emphraim. Right,
2 towards --

3 BY MR. HUGHES:

4 Q Am I correct that that's more of a northerly
5 direction? Would that be fair to say? This is the arrow?

6 A Right. Northerly --

7 Q To northwest, perhaps?

8 A To the northwest.

9 MS. ROBESON: Okay.

10 THE WITNESS: I think of it as the west.

11 MR. HUGHES: The west.

12 MS. ROBESON: I just wanted to make sure.

13 MR. HUGHES: Okay.

14 MS. ROBESON: All right. Go ahead.

15 THE WITNESS: So what we did is we repeated the
16 balloon test March 29th. We gave notice to people that were
17 at the meeting, and to Park and Planning staff. So this is
18 the result of that balloon test, these photos.

19 BY MR. HUGHES:

20 Q And is it true, so the balloon flies, and then you
21 use computer modeling to drop in what the silo would
22 approximately look like?

23 A Yes.

24 Q At these different locations?

25 A Yes. We have professional staff that takes the

1 dimensions of the silo, takes the pictures, and then
2 simulates what the silo would look like at that location. I
3 personally participated in the visual tests, because I like
4 to see and judge for myself, understanding the sensitive
5 nature of this particular site, and being aware of visual
6 impacts and the scenic area.

7 Q And is this approximately what it looked like when
8 you saw it?

9 A Yes. This is --

10 Q This is a fair representation?

11 A This is a very fair representation.

12 Q Okay.

13 MS. ROBESON: Does that -- I'm sorry. Does that
14 approximate the width of the silo, the structure, your
15 simulation?

16 THE WITNESS: Yes. Yes. We don't have the exact
17 specifications. We won't have the specifications until we
18 actually get a building permit or proceed to build the site.

19 MS. ROBESON: But it is not just a thin pole?

20 THE WITNESS: No, it is not a thin pole. It's at
21 least 16 feet.

22 BY MR. HUGHES:

23 Q Ms. Morrison, did you pre-label these photos? And
24 if so, can you just tell us how you pre-labeled them? Do
25 they go from, is it, they start at A, is that correct?

1 A Right. I posted all the photos that are on the
2 map, but I've only posted the photo that shows the
3 simulation. I didn't show, post the photo that shows the
4 balloon, because --

5 Q The balloon shots are also in the record, too, is
6 that correct?

7 A The balloon shots are in your record.

8 MS. ROBESON: Right. Let's just, can you mark
9 that board. I am searching for my exhibit list.

10 MR. HUGHES: I think it will be 35.

11 MS. ROBESON: 35.

12 (Exhibit No. 35 was
13 marked for identification.)

14 MR. KENDRICK: May I ask a question?

15 MS. ROBESON: Certainly.

16 MR. KENDRICK: Am I asking her this question, or
17 can I direct it generally?

18 MS. ROBESON: Well, what's your question?

19 MR. KENDRICK: Well --

20 MS. ROBESON: You can direct it to me, if you're
21 unsure.

22 MR. KENDRICK: Like the images before you, there
23 were images also provided from photos that were taken by
24 others with a different interest in this issue, that were
25 then Photoshopped to show this same information, but from

1 perspectives that are not revealed here. And my question
2 is, can I have one of those emailed to you?

3 MS. ROBESON: Mr. Hughes?

4 MR. HUGHES: I think one of those is already in
5 the record, the letter that came from Ms. Taylor. I believe
6 there was a photo. I don't know if he's talking about
7 additional photos. That's the only one I've ever seen is
8 the one from Ms. Taylor.

9 MR. KENDRICK: Okay. I would recognize if I saw
10 what I'm looking for, but I --

11 MS. ROBESON: I have a 5/13 letter from Carolyn
12 Taylor.

13 MR. HUGHES: Does it show a photo with it? I
14 thought there was a photo.

15 MR. KENDRICK: I believe there was a photo. It's
16 the same letter that I walked in with, but yes, I believe
17 there was a photo that accompanied that.

18 MS. ROBESON: I have a letter. The May 13th,
19 2011 --

20 MR. KENDRICK: May I?

21 MS. ROBESON: Yes, you may. This correspondence?

22 MR. KENDRICK: I'm looking to see. It would have
23 to be with that, because it's referred to in -- or maybe, it
24 may be that it's included with April 27th communications.

25 MR. HUGHES: It could be. My recollection was, it

1 was with a letter from her. I can't remember the dates.

2 MR. KENDRICK: If it's okay for me to provide your
3 email address, I can have that sent now.

4 MS. ROBESON: I don't, I don't know. Exhibit 24,
5 4-27-11 -- no, that's a different thing.

6 MR. HUGHES: It might --

7 MS. ROBESON: I don't see it. This is 22.
8 Twenty-two is a letter from Carolyn Taylor, but it doesn't
9 have a photo associated with it. So I guess my question to
10 you, Mr. Hughes is, how do you feel about letting him
11 submit?

12 MR. HUGHES: I guess our position would be, I have
13 seen the one that Ms. Taylor attached. Maybe somehow it
14 didn't -- I believe it was in the email that tried to get to
15 your staff.

16 MS. ROBESON: It may be that our staff did not
17 print the letter, got the letter but didn't get the picture.

18 MR. HUGHES: We have seen that one, and we have
19 talked to Ms. Taylor and she represented that it was not
20 through a telephoto lense. So I would have no objection to
21 that one coming in. But I would have objection to one that
22 we haven't seen and wouldn't be able to cross-examine.

23 MS. ROBESON: Okay.

24 MR. HUGHES: Hopefully that is fair.

25 MR. KENDRICK: No, I'm looking for the one that

1 has already been submitted, nothing new.

2 MS. ROBESON: Okay. What I can do is this. Let's
3 get through -- that is a question for your testimony when
4 you want to testify. Okay.

5 MR. KENDRICK: Okay.

6 MS. ROBESON: So we have time before you have to
7 do that. Let's finish. Do you have any questions on these
8 photos?

9 MR. KENDRICK: I've seen these before.

10 MS. ROBESON: Okay.

11 MR. KENDRICK: So I don't really have any
12 questions, but I am pretty intimately aware, also, with this
13 area, and I think they are of an advantageous nature.

14 MS. ROBESON: Okay. That you -- okay, mark this.
15 You know, if you want to keep notes, that you can either
16 ask her about or raise at your time to testify.

17 MR. KENDRICK: Okay.

18 MS. ROBESON: Okay.

19 MR. KENDRICK: I am informed that on the May 13th
20 communication that that image was attached.

21 MS. ROBESON: Okay, then our staff --

22 MR. KENDRICK: Yes.

23 MS. ROBESON: Then our staff just didn't get the
24 picture part.

25 MR. HUGHES: They probably had it, they just maybe

1 didn't print it.

2 MR. KENDRICK: It can be re-sent if I can be
3 provided with an email address, I'll provide that now.

4 MS. ROBESON: Okay. It's Dawn, D-A-W-N.Minor,
5 M-I-N-O-R, at Montgomery County MD.gov.

6 MR. KENDRICK: M-I-N-O-R?

7 MS. ROBESON: M-I-N-O-R.

8 MR. KENDRICK: At Montgomery, okay.

9 MS. ROBESON: Okay. What I need to do is get
10 through Ms. Morrison's testimony --

11 MR. KENDRICK: Yes, so she can --

12 MS. ROBESON: -- well, so you'll have plenty of
13 chance to cross-examine. Okay? Okay. Continue.

14 BY MR. HUGHES:

15 Q Ms. Morrison, in these photographs, in the one
16 that's title 19100 Barnesville Road, 19700 Barnesville Road,
17 22711 Mount Ephraim, and mouth of Monocacy Road, do you see
18 telephone poles and telephone lines in those photos?

19 A Yes.

20 Q And do you have any idea, if you do, roughly what
21 height those telephone poles might be? Are you able to
22 estimate or not?

23 A Probably 30, between 25 and 35 feet, something
24 like that.

25 Q And can you see in the one labeled 19100, are

1 there telephone poles on both sides of the road, is that
2 correct?

3 A Yes.

4 Q Okay. And does it have multiple strings running
5 from pole to pole, is that correct?

6 A Yes, the one on the west side. On one side
7 there's multiple lines.

8 Q Okay. And the one 22711, can you see, it looks
9 like the poles are fairly close to each other. Does it look
10 like, do they run one after the other, is that correct, with
11 some separation?

12 A Yes.

13 Q Okay. Thank you.

14 A They hold up the line.

15 Q Thank you. Ms. Robeson, I'd like to offer this,
16 if it's not in yet.

17 MS. ROBESON: I'll admit it. Do you have any
18 objections, Mr. Kendrick?

19 (Exhibit No. 35 was
20 admitted into evidence.)

21 MR. KENDRICK: No, I don't.

22 MS. ROBESON: Okay.

23 BY MR. HUGHES:

24 Q Is it true, there was a little bit of testimony
25 from Mr. McGarity about the proposal here is to place the

1 antennas on the outside of the silo and paint them to match
2 the silo, is that correct?

3 A Yes.

4 Q Is it your belief that by painting them a similar
5 or same color to the silo that they will blend in and not be
6 noticeable from off-site or far away?

7 A Yes. Because we're, as we pointed out on the site
8 plan, the setbacks are so far into the parcel, any points
9 where we could see the silo are so far away, you simply
10 can't make out the antennas. There are places where you
11 make out the form of the silo, but not the utility antennas
12 with the naked eye.

13 Q Thank you. Okay. I'm going to ask you if you can
14 identify this document. Can you tell us what this is, what
15 it's labeled, if anything?

16 MS. ROBESON: Why don't we mark that as Exhibit
17 36, and I'm going to mark the small version as Exhibit 37.

18 (Exhibit Nos. 36-37 were
19 marked for identification.)

20 MR. HUGHES: Thank you.

21 MS. ROBESON: I believe this is already in the
22 record, Mr. Kendrick. Do you have any objections to this?

23 MR. KENDRICK: No, I do not.

24 (Exhibit Nos. 36-37 were
25 admitted into evidence.)

1 BY MR. HUGHES:

2 Q Ms. Morrison, what is this document?

3 A It has a title, but --

4 Q Okay. There's no title, but what is it.

5 A It's a map with the site that's under
6 consideration.

7 Q How is that labeled? How is that identified?

8 A It's labeled as 7WAN540B, Carlisle/Mount Ephraim.

9 Q And what type of flag does it have?

10 A It has a red flag.

11 Q Okay. And can you tell us what -- it looks like
12 there are purple lines that go around to green flags. Can
13 you tell us what they are and what this represents?

14 A The purple lines are the distance to T-Mobile's
15 antenna sites that are already on air. The green flag
16 means, it's a go it's on air.

17 Q And so these are link up or connecting sites to
18 this proposed site, is that correct?

19 A Right.

20 MS. ROBESON: So this is a large map of T-Mobile's
21 connecting site?

22 BY MR. HUGHES:

23 Q Yes.

24 A Yes.

25 Q So is it correct, you have a site to the

1 northwest, or you have a site that looks like it's to the
2 northwest, 7WAN169C, that's 2.85 miles away, is that
3 correct?

4 A Right.

5 Q And then you have one to the southeast that's
6 7WAN562B, that's 2.25 miles away, is that correct?

7 A Yes.

8 Q Okay. And then just somewhat to the south you
9 have WAN560A that's 3.21 miles away on Beallsville Road?

10 A Yes.

11 Q And the last one you have is on 7WAN153B, that's
12 2.01 miles away, is that correct?

13 A In Dickerson, yes.

14 Q Okay. Thank you. I'd like to offer this,
15 although it may be in, I'd like to offer the large one in as
16 well.

17 MS. ROBESON: Okay. Any objections, Mr. Kendrick?

18 MR. KENDRICK: No objection.

19 MR. HUGHES: Thank you.

20 MS. ROBESON: Okay. It's admitted.

21 BY MR. HUGHES:

22 Q Ms. Morrison, I think this has been talked about,
23 and I apologize, I don't remember if it was you or
24 Mr. McGarity or both, but -- I think it was you -- so this
25 proposal has been modified since you filed the special

1 exception a little bit in that the height has been reduced
2 from 150, 127 and has been changed to a silo and moved a
3 little over 1,000 feet from the road, is that correct?

4 A Yes.

5 Q Okay. Thank you. And are you familiar with the
6 Montgomery County Tower Committee?

7 A I am.

8 Q Okay. And it reviews all applications to place
9 antennas, whether that's a new tower, or pole, or silo like
10 this one, or to put antennas on a building or a water tank,
11 is that correct?

12 A Yes.

13 Q Is it true that it reviewed the application to put
14 a structure on this property?

15 A Yes. Twice.

16 Q Okay. And did they determine that there was a
17 coverage need out here for T-Mobile?

18 A Yes.

19 Q Did they review whether there were any existing
20 structures that T-Mobile could locate upon in the area to
21 meet the coverage objectives?

22 A They did. That was back in 2009. I believe that
23 they brought up an existing tower down the road at, it was
24 either Dependable Auto, it was a Crown tower. We had
25 evaluated it, and it didn't meet our coverage needs. It was

1 too close probably to WAN516 --

2 Q Okay.

3 A -- by Curtis Jews.

4 Q So is it true that in March of 2010, they
5 recommended approval with some conditions on it --

6 A Yes.

7 Q -- as per their, I think it's item, as in Exhibit
8 8, the TFCG recommendation dated 3/3/10? Correct?

9 A Right.

10 Q Okay. And so since that time -- so they
11 recommended approval for a 150-foot structure on the
12 Carlisle property that was a monopole with the antennas on
13 the inside, is that correct? 150-foot monopole is what they
14 recommended, is that correct?

15 A Well, we presented it December 2009, I believe it
16 was a monopole --

17 Q Okay.

18 A -- antennas on the outside. And it was changed to
19 that.

20 Q Okay. But March 2010, what was their
21 recommendation?

22 A It was recommendation for uni-pole with antennas
23 on the inside.

24 Q Okay. All right. Thank you. Okay. Ms. Morrison,
25 is it your testimony that this proposal would be consistent

1 with the general plan for this district, including master
2 plan adapted by the Commission?

3 A Yes, I think it would be. It's located in an RDT
4 zone where telecom facilities are permitted by special
5 exception. I think it's sited in a way that's consistent
6 with the comprehensive plan in terms of minimizing to the
7 extent feasible visual impacts on adjoining residential and
8 agricultural properties, especially with the changes to the
9 design.

10 Q Okay. Thank you. Ms. Morrison, is it true that
11 per the County Zoning Ordinance, if this was a silo that was
12 not being proposed with telecommunications equipment, that
13 it would be a permitted use, no building permit and no
14 height restriction, as an agricultural use structure? Is
15 that correct?

16 A Yes. My understanding of the Zoning Ordinance, in
17 my experience in Montgomery County is that building this use
18 directly for agricultural purposes, this is in the section,
19 I think is 59-A-3 where building permits are required, if
20 you are doing a building or structure strictly for
21 agricultural purposes, no building permit is required.

22 Q So theoretically, if Mr. Carlisle or another
23 farmer wanted to put up a silo for pure agricultural use,
24 they could put one up 125 feet or actually even 170 feet, is
25 that correct?

1 A Theoretically, they could.

2 Q Okay. Is it your testimony that this proposal
3 would be in harmony with the general character of the
4 neighborhood, considering the density, design, scale, and
5 bulk of the proposed new structures, and including the type
6 of activity, the traffic, parking conditions, and uses in
7 and around the area?

8 MR. KENDRICK: Can I object to that?

9 MS. ROBESON: What's the basis?

10 MR. KENDRICK: Well --

11 MS. ROBESON: Yes, you may object.

12 MR. KENDRICK: -- it's qualitative in character,
13 the question. It's not a factual assessment.

14 MS. ROBESON: You're right, but that's why --
15 that, what Mr. Hughes is reading is the standard that has to
16 be met in the Zoning Ordinance.

17 MR. KENDRICK: I see.

18 MS. ROBESON: Now, you are free to -- she has been
19 qualified as an expert in land use.

20 MR. KENDRICK: I got you.

21 MS. ROBESON: You're free to disagree.

22 MR. KENDRICK: Okay.

23 MS. ROBESON: Go ahead.

24 MR. KENDRICK: I do disagree. But go ahead.

25 THE WITNESS: Certainly with regard to traffic and

1 population, there's no impact. The site is unmanned. For
2 repair and maintenance it is visited maybe once a month,
3 once every two months, with a small vehicle. There's no
4 noise. There's no odor. There's no emission. So certainly
5 with that aspect of the use, there is no interference.

6 The main impact associated with the telecom
7 facility, as a special exception use is its official impact,
8 and I believe by the photos, we've shown that that visual
9 impact is mitigated and minimized by a couple of things, not
10 only by its design, but by its placement on the property.

11 Let me go back to the aerial. It's here. I
12 believe that the second location is, from a planning point
13 of view, is a much better location than the first location.
14 The first location is easier to construct, probably. But
15 my point of view in this whole thing is the zoning part, the
16 planning part of it.

17 We're able to take advantage of a curving road.
18 We're able to take advantage of all this tree cover.
19 There's some road curvature issues, that the result is most
20 of that facility is going to be hidden. The parts that you
21 will be able to see are just the very top parts of the silo.
22 You will not be able to see the compound at all. There
23 probably is no need to landscape it, because it simply won't
24 be seen outside of this parcel.

25 BY MR. HUGHES:

1 Q So is it then your testimony that this proposal,
2 if approved, would not be detrimental to the use, peaceful
3 enjoyment, economic value, or development of surrounding
4 properties?

5 A That's my belief, and the fact that it would
6 enhance, because it would give the wireless coverage.
7 There's a lot of farming in this area. The farmers are
8 outside. They need it.

9 Q Well, is it your testimony that it will not cause
10 any objectionable noise, vibrations, fumes, odors, dust,
11 illumination, glare, visible activity at the site?

12 A Yes.

13 Q Will it be lit?

14 A This will not be lit. According to our studies,
15 which evaluate the FAA criteria based on the height of the
16 structure and the ground elevation, and the distance to
17 airports.

18 Q Do you recognize this document that I'm showing
19 you?

20 A Yes.

21 Q What is it?

22 A It's called tower air determination.

23 Q And so, does it evaluate FAA criteria through a
24 software program?

25 A Yes.

1 Q Okay. So is it true that it says it does not
2 require lighting, is that correct?

3 A That's what it says.

4 Q And if you were to be approved, you would get T-
5 Mobile, before any site is built, is it true they get an
6 official FAA notice as well? Is that correct?

7 A Yes. To my knowledge, yes.

8 Q Okay.

9 MS. ROBESON: Okay, I'm going to -- I don't see
10 that list in the file already, so I'm going to mark it as
11 Exhibit 38, which is the Tow Ware determination results.
12 Mr. Kendrick, do you have any objections?

13 MR. KENDRICK: I have only objections to the
14 qualitative aspects of these assessments.

15 MS. ROBESON: Okay, but not the admission.

16 MR. KENDRICK: But nothing to the factual --

17 MS. ROBESON: Okay.

18 MR. KENDRICK: -- admission of the site location,
19 and so forth.

20 MS. ROBESON: All right.

21 (Exhibit No. 38 was
22 marked for identification
23 and admitted into evidence.)

24 BY MR. HUGHES:

25 Q Thank you. Ms. Morrison, is it your opinion that

1 when you evaluate any existing or approved special exception
2 on a property or area that this, if approved, would cause a
3 -- I'm sorry, let me back up. I apologize. That if this
4 special exception is approved, would it have any impact,
5 inappropriate impact on any existing special exceptions in
6 and around the area?

7 A No.

8 Q And why is that? Why do you think this SE would
9 have minimal impact?

10 A It's set back so far from the property line, and
11 it doesn't have any traffic or population impacts.

12 Q Thank you. Is it your testimony that this would
13 not adversely affect the health, safety, security,
14 normalness or general welfare of the residence, visitors, or
15 workers in the area?

16 A Yes.

17 Q Is it for the same reasons you've mentioned
18 before, already?

19 A Yes. We have to comply with the federal standards
20 regarding safety emissions. And it really has no other
21 safety issues associated with it.

22 Q Will this be served by adequate public services
23 and facilities or not require services?

24 A It's really not applicable to this particular use.

25 Q Does it require water or sewage?

1 A No.

2 Q And you've mentioned the road activity. It's very
3 minor trips.

4 A Right.

5 Q Okay. Ms. Morrison, I'm going to ask you if you
6 can identify some documents.

7 MS. ROBESON: While you're doing that, can I ask
8 some questions based on my staff report?

9 MR. HUGHES: Yes, ma'am.

10 MS. ROBESON: Are you proposing a silo or a grain
11 bin? Is there a difference?

12 THE WITNESS: We're proposing a silo. It's built
13 by a silo company. It's a non-working silo, which means
14 that it's not intended, it won't be used by a farmer.

15 MS. ROBESON: For agricultural purposes.

16 THE WITNESS: Right. Right.

17 MS. ROBESON: Okay.

18 THE WITNESS: Right.

19 MS. ROBESON: So that's, you're not going to do
20 what was suggested in the staff report.

21 MR. HUGHES: Can I ask one followup to that?

22 MS. ROBESON: Sure.

23 BY MR. HUGHES:

24 Q If this was, perhaps as what's suggested by staff,
25 a pure agricultural structure, then is it your position that

1 we wouldn't even need to be here today, because a special
2 exception wouldn't be required?

3 A We wouldn't need special exception. We wouldn't
4 need the Tower Committee. We wouldn't need the
5 environmental stuff.

6 MS. ROBESON: And then does this have the ability,
7 does what you're proposing -- okay, thank you. Okay. Does
8 this have the ability to be retrofitted to function as a
9 grain pit.

10 THE WITNESS: We saw that that came up.

11 MS. ROBESON: You're not proposing that, though?

12 THE WITNESS: We're not really proposing that.

13 MS. ROBESON: But you do agree that it has to be
14 torn down if it ever ceases to be used?

15 THE WITNESS: Absolutely. That's part of the --
16 that's part of the lease, and the contract.

17 BY MR. HUGHES:

18 Q That's what I was going to say. That's part of
19 your commitment in your lease to Mr. Carlisle, isn't that
20 correct?

21 A Right.

22 Q That if and when you leave, you will take all the
23 facilities away?

24 A Yes.

25 Q Okay.

1 A We're not pretending here. This is a
2 telecommunications facility that's designed as a silo. It
3 comes under that section of the Zoning Ordinance. The
4 Zoning Ordinance requires that the telecommunications
5 facility be removed. That doesn't mean just the antennas,
6 because the silo, even though it looks like a silo, is a
7 telecommunications facility.

8 MS. ROBESON: So you will remove the silo.

9 THE WITNESS: We will remove it.

10 MS. ROBESON: Okay. I'm sorry to interrupt. Go
11 ahead, Mr. Hughes.

12 MR. HUGHES: No, that's good. Thank you.

13 BY MR. HUGHES:

14 Q And just further on that point, one or two
15 questions. Would you have, would there be concerns about
16 the electronics equipment of the facility if this was --
17 there's greater concern and greater requirements if this was
18 an active ag use?

19 A Yes. T-Mobile would have some concerns with
20 flammability of grain and proximity of antennas and the
21 equipment.

22 Q And it potentially could be done, but that's not
23 what you're proposing here?

24 A That's not what we're proposing here.

25 Q All right.

1 A This is a telecom installation.

2 MS. ROBESON: Okay. I just wanted to clarify
3 that. Go ahead.

4 BY MR. HUGHES:

5 Q Ms. Morrison, can you tell us, there's a series of
6 three documents that are somewhat related. Can you tell us
7 what the first document is? Do you recognize it?

8 A Yes.

9 Q What is it?

10 A It's an affidavit from William O'Brien, who is the
11 real estate manager at T-Mobile, stating that T-Mobile will
12 register its batteries with the County's hazmat program.

13 Q Are you familiar with that, Montgomery County
14 regulation, Executive regulation 1703, 1703 regarding using,
15 processing, transferring and storing or manufacturing of
16 hazardous substances?

17 A Yes, and I'm somewhat familiar. I don't do the
18 actual registration for T-Mobile, but they are aware that it
19 needs to be done, and they will do it.

20 Q And are you aware that that includes all batteries
21 in the County such as these types of batteries?

22 A Yes.

23 MS. ROBESON: No, I've marked that as 39(a), (b)
24 and (c). Mr. Kendrick, do you have any objections?

25 (Exhibit No. 39 was

1 marked for identification.)

2 MR. KENDRICK: Help me. I want to see 39(a), (b)

3 and (c). This is it, right here, correct?

4 MR. HUGHES: Yes, sir.

5 MR. KENDRICK: Okay.

6 BY MR. HUGHES:

7 Q Ms. Morrison, the first letter is an affidavit

8 from --

9 MR. KENDRICK: No objection.

10 MR. HUGHES: Thank you. Okay.

11 MS. ROBESON: Okay. It's admitted.

12 (Exhibit No. 39 was

13 admitted into evidence.)

14 BY MR. HUGHES:

15 Q All right. Thank you. Let's see. Ms. Morrison,

16

17 you're aware that the code requires that telecommunications

18 structures must not exceed 155 feet unless there is special

19 justification. Are you aware of that section?

20 A Yes.

21 Q And what's the height of your structure? Is it

22 below 155 feet?

23 A It's 127 feet.

24 Q Okay. And are you aware that the code also says

25 the support structure must be cited to minimize visual

1 impact?

2 A Yes.

3 Q Okay. And have you -- what have you done here to
4 try to meet that in this situation?

5 A As I discussed before, we have it 1,100 feet from
6 the closest road. We have setbacks that are at least twice
7 what they need to be from the requirement that's cited among
8 very dense trees. And it's located on a portion of the
9 parcel where the bulk of the facility will be hidden from
10 view.

11 Q Thank you. And are you also familiar with what
12 the code says, that the support structure and its equipment
13 must be surrounded by landscaping or other screening options
14 that provide a screen of at least six feet high. Are you
15 familiar with that?

16 A Yes.

17 Q And do you do that in this case?

18 A Yes. We're proposing a fence and landscaping.

19 Q Okay.

20 A I don't know that you need both.

21 Q Are you familiar that staff maybe suggested that
22 the landscaping should not be there?

23 A Yes.

24 Q And would T-Mobile be willing to have it there or
25 not have it there?

1 A T-Mobile doesn't care. They'd be happy not to put
2 in landscaping.

3 Q Okay. The silo itself, structurally, will it be
4 able to handle at least two other carriers?

5 A Yes, it will be designed to handle at least two
6 other carriers.

7 Q And also at the ground, do you have ample ground
8 space for at least two other carriers?

9 A Yes.

10 Q And does T-Mobile agree that no signs or
11 illuminations would be permitted on the antenna as a
12 structure, unless it's required by the FCC, FAA or the
13 County?

14 A Yes.

15 Q And as you testified earlier, though, your belief
16 is, based upon the FAA regulations, that a light will not be
17 required here?

18 A Very unlikely.

19 Q Okay. And does T-Mobile agree that every, that
20 the support structure would have to be removed at the cost
21 of T-Mobile if it is no longer used by any telecom carrier
22 for more than 12 months?

23 A Yes, we agree to that.

24 Q So the code requires it, and do you also have an
25 agreement with Mr. Carlisle, the owner, to do so?

1 A Yes.

2 Q And do you concur that the support structure must
3 be, will be identified by a sign no larger than two square
4 feet affixed to the support structure or an equipment
5 building?

6 A Yes, that would be the only sign.

7 Q And do you agree that no outdoor storage, so
8 storage of stuff that's not being utilized, would occur on
9 the site, in and around the site?

10 A Not within it, right.

11 Q Would not?

12 A Yes.

13 Q And that each, you concur and understand that each
14 telecommunication facility is responsible for maintaining it
15 in a safe condition?

16 A Yes.

17 Q T-Mobile will do so?

18 A T-Mobile is committed to that.

19 MR. HUGHES: One second please. Those would be my
20 questions for Ms. Morrison.

21 MS. ROBESON: Okay. Mr. Kendrick, do you have any
22 questions?

23 MR. HUGHES: I apologize. Did I need to move in
24 the battery affidavits. No, he accepted those.

25 MS. ROBESON: No. I --

1 MR. HUGHES: I'm sorry. Yes. I apologize.

2 MR. KENDRICK: I have one question and it has to
3 do with the missing image from earlier.

4 MS. ROBESON: Yes, I do have that. I don't think
5 we need -- you may want to ask her questions about it. Have
6 you shared that with Mr. Hughes?

7 MR. KENDRICK: Yes, ma'am.

8 MR. HUGHES: Yes.

9 MS. ROBESON: Mr. Hughes, do you agree to admit
10 this?

11 MR. HUGHES: No objection.

12 MS. ROBESON: Okay. I'm going to mark it then as
13 Exhibit 40, and --

14 (Exhibit No. 40 was
15 marked for identification
16 and admitted into evidence.)

17 MR. KENDRICK: And I apologize for this
18 shortcoming.

19 MS. ROBESON: Now, you have to tell me what this
20 is.

21 MR. KENDRICK: Well, that's the thing. I have
22 written these words. View of Sugarloaf Mountain with
23 Photoshop, derived from balloon test photo, taken from --
24 and then I'm trying to fill in the location where this was
25 taken from. But it was not on anyone's property. It was on

1 a public roadway that this was taken. So this is --

2 MS. ROBESON: Well, just for the purpose of --

3 MR. KENDRICK: -- I just, I need -- yes, go ahead.

4 MS. ROBESON: Just for the purpose of getting it
5 in the record we can say Photoshop simulated view of
6 facility. All right.

7 MR. KENDRICK: Right. And so my question to --

8 MS. ROBESON: And it is admitted.

9 CROSS-EXAMINATION

10 BY MR. KENDRICK:

11 Q -- yes, Ms. Morrison, do you agree that this
12 Photoshop rendering of the silo is consistent with the same
13 technique used to generate the other Photoshops inasmuch as
14 it was derived from a balloon test, with the balloon visible
15 at the height shown, and that the width approximated here,
16 which I believe you said earlier was about 16 feet, is also
17 fairly approximated in this rendering?

18 A I can't agree with that. I need to know more
19 information from the person who took the picture, where they
20 took it from and how they did the Photoshopping.

21 MR. KENDRICK: Then I would like to ask that I get
22 the opportunity to provide that additional information
23 because I --

24 MS. ROBESON: Okay. You can do that.

25 MR. KENDRICK: Yes, I'm sorry.

1 MS. ROBESON: Right now you are just asking
2 Ms. Morrison questions. When you get to your testimony, you
3 can make that request. Okay?

4 MR. KENDRICK: Okay.

5 MS. ROBESON: So you're just asking her questions
6 now.

7 MR. KENDRICK: All right. Well, all right. I'm
8 done for the moment.

9 MS. ROBESON: Okay. Anything, any redirect?

10 MR. HUGHES: No, ma'am.

11 MS. ROBESON: Okay. Anything else for
12 Ms. Morrison?

13 MR. HUGHES: No, thank you.

14 MS. ROBESON: Okay. Then she can be excused.

15 MR. HUGHES: Okay. I would call our --

16 MS. ROBESON: Or you can stay.

17 MR. HUGHES: -- projected last witness, Mr. Curtis
18 Jews.

19 MS. ROBESON: Okay.

20 (Witness sworn.)

21 MS. ROBESON: Okay. Hold one second.

22 Mr. Kendrick, did you have your hand up?

23 MR. KENDRICK: Well, you'll have to forgive me. I
24 had coffee and water and I was going to ask for two minutes
25 to run and be right back. MS. ROBESON: Okay. All

1 right. We will take a five minute break.

2 (Whereupon, at 12:27 p.m., a brief recess was
3 taken.)

4 MS. ROBESON: Okay. Are you ready, Mr. Hughes?

5 MR. HUGHES: Yes, ma'am.

6 MS. ROBESON: Mr. Kendrick?

7 MR. KENDRICK: Yes.

8 MS. ROBESON: Okay. I didn't, did I swear you in?

9 THE WITNESS: Right before the break.

10 MS. ROBESON: Okay. Go ahead.

11 DIRECT EXAMINATION

12 BY MR. HUGHES:

13 Q Can you state your full name?

14 A Curtis Jews, last name is J-E-W-S.

15 Q And what is your profession, sir?

16 A I'm the radio frequency lead engineer.

17 Q Okay. And can you tell us a little bit about your
18 professional and educational background?

19 A Been doing RF engineering and designing of
20 telecommunications sites for over 12 years. I have my
21 certification in computer technology and field services. I
22 don't know if you need me to describe anything else.

23 Q How many -- I'm sorry, how many years have you
24 been working on this?

25 A Twelve.

1 Q Twelve years. And during those 12 years, how
2 many, if this is a site, approximately how many types of
3 sites like this have you worked on?

4 A Over 2,000.

5 Q Okay. And have you been involved in zoning
6 hearings like this before today?

7 A Yes, I have.

8 Q Have you testified in jurisdictions in Maryland?

9 A Yes, I have.

10 Q Have you ever been recognized as an expert in this
11 jurisdiction or others in Maryland?

12 A Yes, I have.

13 Q Do you recognize -- did I give you a copy of this?
14 MR. KENDRICK: No, not yet. I assume this will be
15 41.

16 BY MR. HUGHES:

17 Q Do you recognize this document, sir?

18 A Yes, sir.

19 Q And what is that?

20 A My resume, resume CV.

21 MR. HUGHES: Ms. Robeson, I'd like to offer
22 Mr. Jews as an expert in radio frequency design of cell
23 sites.

24 MS. ROBESON: Okay.

25 MR. HUGHES: And telecommunication facilities

1 MS. ROBESON: Mr. Kendrick, do you have an
2 objection?

3 MR. KENDRICK: No. I've met Mr. Jews before, and
4 I believe that he's been doing this for at least 12 years.

5 MS. ROBESON: Okay. And do you have an objection
6 to the admission of his resume as Exhibit 41?

7 MR. KENDRICK: No. No.

8 MS. ROBESON: All right. Proceed, Mr. Hughes.

9 (Exhibit No. 41 was
10 marked for identification
11 and admitted into evidence.)

12 MR. HUGHES: Thank you. And could I -- my
13 apologies. Could I ask you again what 40 is?

14 MS. ROBESON: Forty is the Photoshop simulated
15 view of the facility.

16 MR. HUGHES: From Mr. Kendrick. Yes.

17 MS. ROBESON: Yes.

18 BY MR. HUGHES:

19 Q Okay. Mr. Jews, can you tell us why T-Mobile is
20 proposing this site for its customers?

21 A Because we have not only a coverage need, but
22 there are also complaints of current customers that are
23 traveling within and live in the area?

24 Q Okay. So what's kind of the area you're trying to
25 serve right now? What are you trying to do for the

1 customers?

2 A We're trying to improve the in vehicle coverage
3 along Mount Ephraim Road, Dickerson Road, Barnesville Road,
4 just to name a few, and also the in building coverage in the
5 surrounding residential properties.

6 Q When you say in building, you mean in building or
7 in home, is that correct?

8 A In home, in -- yes.

9 Q Okay. And can you explain what the coverage is
10 like now for T-Mobile customers, and use any visuals that
11 may help you?

12 A Currently, the coverage is unreliable coverage, I
13 would say. There is coverage, but very unreliable. What I
14 have to demonstrate what we are experiencing today, and we
15 would hope to improve in the near future are these composite
16 coverage maps. What these --

17 Q And I apologize. Can you identify what this first
18 document, coverage map you note is? How is it labeled?

19 A It's labeled as existing on air coverage.

20 MS. ROBESON: Okay. So Exhibit 42 is going to be
21 the large version of existing on air coverage map. And 41
22 will be the smaller, I mean, 43.

23 (Exhibit Nos. 42-43 were
24 marked for identification
25 and admitted into evidence.)

1 THE WITNESS: Ms. Robeson, would you like me to
2 write that?

3 MS. ROBESON: Yes, please.

4 MR. KENDRICK: And Ms. Robeson --

5 MS. ROBESON: Yes.

6 MR. KENDRICK: -- will I be able, at the
7 conclusion, to get an updated exhibit list, just a list?

8 MS. ROBESON: Absolutely. Yes.

9 MR. KENDRICK: Okay.

10 MS. ROBESON: Well, not today.

11 MR. KENDRICK: Got you. Email or --

12 MS. ROBESON: Yes.

13 MR. HUGHES: Is this 42, the large one, I
14 apologize. Is that 41 or 42?

15 MS. ROBESON: 42 is the large existing --

16 MR. HUGHES: Okay.

17 MS. ROBESON: -- on air coverage map, and 43 is
18 the small one.

19 BY MR. HUGHES:

20 Q Okay. So can you identify, 42, the top page says,
21 existing on air coverage, is that correct?

22 A That's correct.

23 Q And tell us what that shows and what it means to
24 T-Mobile customers?

25 A What this is showing is the current state of the

1 coverage that we're providing. And also it has a series of
2 three different colors, green, blue and yellow. Let me
3 explain the colors.

4 Green is your in building, in home coverage. Blue
5 is your in vehicle coverage that you could expect when you
6 are inside of your vehicles. Yellow is your on street
7 coverage. And this is considered coverage that is
8 experienced when you are using the phone and you hold it to
9 your ear.

10 Q And where is, can you identify on this map where
11 the proposed site is, approximately?

12 A The proposed site is here. When I say here, it's,
13 I would say, west of Mount Ephraim Road.

14 Q And what's it, how is it labeled?

15 A It's labeled as 7WAN540B.

16 Q Okay. So what's the experience right now in and
17 around that area for T-Mobile customers as far as coverage
18 reliability?

19 A The call, your coverage here, calls are being
20 interrupted by dropped calls, or you're unable to
21 successfully place or originate a phone call.

22 Q And what is the coverage goal? What are you guys
23 hoping to provide? What do your customers want now as far
24 as coverage reliability?

25 A What we're trying to do is not only, once again,

1 enhance the coverage for voice, but also for data. So we
2 want to be able to increase the confidence level that when a
3 customer is, has a need to make a phone call or get on the
4 internet, they will do it confidently.

5 Q Okay. So it's, for more lay people like me, so
6 wireless connectivity, you want to provide it for wireless
7 telephone and wireless internet, is that correct?

8 A That's correct.

9 Q Okay. And are you finding that people are using
10 much more voice and even more so data numbers? Are they
11 increasing in usage?

12 A Data is increasing in usage over voice.

13 Q Okay. Can you show us -- so if this site is
14 approved and built, what would it mean to the customers who
15 traveled, lived, or worked in this area?

16 MS. ROBESON: And that is exhibit --

17 THE WITNESS: Existing on air coverage.

18 MR. HUGHES: It's connected to the other one. How
19 should we label that?

20 MS. ROBESON: Okay. That can be 42(b) then.

21 THE WITNESS: Okay.

22 MS. ROBESON: And the small one will be 43(b).

23 BY MR. HUGHES:

24 Q Okay. So what does this show us, Mr. Jews? What
25 would this mean to your T-Mobile customers?

1 A This is an after shot. This shows us the
2 improvement of using or utilizing the proposed site, the
3 improvement of the coverage.

4 Q Okay. And so is there, the customer experience
5 will be much better in and around the area as your map shows
6 in your testimony, is that correct?

7 A That's correct.

8 Q Mr. Jews, is it your understanding that more calls
9 are being made to 911 from wireless phones than actual home
10 land lines these days. Is that correct?

11 A That is correct. I'm aware of that stat.

12 Q Is it also true that CTIA, the wireless
13 association states that there are over 290,000 911 calls
14 made each day on wireless? Is that your understanding?

15 A I do understand that stat.

16 Q And did you pull some stats of these neighboring
17 sites that you have --

18 A Yes.

19 Q -- to show what the number of 911 calls that were
20 collected in and around this area, is that correct?

21 A That's correct.

22 Q So how many -- let's go back to -- do we need to
23 go back to a proximity map?

24 A We can or we can --

25 Q Because how many sites did you look at? Was it

1 these four, is that correct?

2 A Yes.

3 Q Okay. So these four that are on Exhibit 36, and
4 is it correct that you looked at, you pulled data that
5 showed how many 911 calls were collected by these four sites
6 in a recent 12 month period?

7 A Yes.

8 Q Okay. And did you pull -- let me back up. Each
9 site, how many antenna sectors do they typically have?

10 A Three. Three sectors.

11 Q And how do those sectors point?

12 A It depends on the coverage objectives. But I
13 pulled the data of the sectors or the antennas that serve
14 this affected area.

15 Q That are shooting down to the proposed site area,
16 is that correct?

17 A That's correct.

18 Q Okay. So you pulled those sectors --

19 MR. KENDRICK: I'm sorry, can you explain that
20 again?

21 THE WITNESS: Which part?

22 MR. KENDRICK: Whatever you were just saying.

23 MR. HUGHES: The sectors.

24 MR. KENDRICK: I'm trying to understand what
25 you're saying.

1 THE WITNESS: Just the sectors, the sectors?

2 MR. KENDRICK: I'm sorry.

3 MR. HUGHES: I can help with that.

4 MR. KENDRICK: You're in the process of
5 presenting, for those of us who are uninitiated, information
6 about some quantity of 911 calls in the vicinity, serviced
7 by these four existing towers?

8 THE WITNESS: Correct.

9 MR. KENDRICK: And what I'm trying to discern is
10 whether, in addition to just giving us an aggregate of the
11 four, if there is any granularity as to the locust? Were
12 they within the region that this proposed new tower would
13 serve, or were some of them coming from across the river in
14 Leesburg, et cetera, or do you have that information?
15 That's a question I'll ask, but I mean, basically, it
16 sounded like you were trying to provide some information --

17 THE WITNESS: I do have that information.

18 MR. KENDRICK: -- about what that means. So go
19 ahead.

20 THE WITNESS: All right.

21 BY MR. HUGHES:

22 Q So, good point. So the four sites, you said you
23 looked at the four sites, and you said you looked at the
24 sectors, the antennas that are pointing towards the
25 direction of the Carlisle property, is that correct?

1 A That's correct.

2 Q So you did not pull, or you are going to talk
3 about data that's not from the other two sector sites that's
4 pointing away from the Carlisle property. So essentially
5 you're trying to show data of calls that were in and around
6 the area of the Carlisle that might be served by this site
7 in the future, is that right?

8 A That's correct.

9 Q Okay. And how many 911 calls -- how many 911
10 calls did you pull from those four sites in the sectors
11 within a recent 12 month period?

12 A For the sectors, antenna pointing in this area
13 only, serving this area, was 5,000.

14 Q Okay. Thank you. And the same type of question,
15 is it true that you also pulled data about dropped calls
16 from the same site and the same sector pointing in toward
17 the Carlisle property?

18 A Yes.

19 Q And that recent 12-month period, is it true the
20 recent 12-month period was from February 2010 to January of
21 2011?

22 A That's correct.

23 Q How many dropped calls did you find?

24 A That was 12,000.

25 Q And was it -- okay. And how about, did you also

1 get the total number of call attempts that those sectors and
2 sites pulled in that area? And what would that figure have
3 been?

4 A That was over 150,000.

5 Q Thank you. So if this site was approved, is it
6 fair to say it would help collect calls, and it would gather
7 some of these 911 calls, is that correct?

8 A That's correct.

9 Q Would it also help with increasing the, or
10 reducing the percentage of dropped calls in this area?

11 A That's correct.

12 Q And it would help collect some of these call
13 attempts, I guess, is that correct?

14 A That is correct.

15 Q Mr. Jews, is it your commitment, is it T-Mobile's
16 commitment that if this is approved and built, that you
17 would comply with your FCC license and FCC guidelines, and
18 that the emission levels would be within the required
19 guidelines?

20 A Yes, they would be.

21 Q Is it true that when you build a new site, a tower
22 that's up in the air, versus putting antennas up on a
23 building where people potentially could walk around it, is
24 it your understanding that typically those emission levels
25 are hundreds to a thousand times below the FCC guidelines?

1 A They are below.

2 Q And would you expect that to be the same in this
3 case?

4 A Yes.

5 Q Because you're proposing that 127 feet, is that
6 correct?

7 A That's correct.

8 Q One second Ms. Robeson, please.

9 MS. ROBESON: Do you have a small version of 43(b)
10 which is the existing coverage with 540(b).

11 MR. HUGHES: I apologize.

12 MS. ROBESON: That's okay.

13 MR. HUGHES: I was supposed to bring both of these
14 up to you.

15 MS. ROBESON: I'm just --

16 MR. HUGHES: Yes. Did I give you two of the same?

17 MS. ROBESON: Yes.

18 MR. HUGHES: My mistake.

19 MS. ROBESON: That's okay. There you go.

20 MR. KENDRICK: Is the small version of the
21 proposed 45, is that what it is, Exhibit 45 or 44?

22 MR. HUGHES: No, I think they're 43(a) and (b).

23 MS. ROBESON: No, they are 43(a).

24 MR. KENDRICK: 43(a) is existing.

25 MS. ROBESON: No. 43 -- 42(a) and (b) is the

1 large existing without the new site. 43(a) and (b) are the
2 large and small existing with the site.

3 MR. KENDRICK: So (b) is the existing in each
4 instance, and (a) is the proposed.

5 MS. ROBESON: Right. Right.

6 MR. KENDRICK: Okay. Thank you. Okay. Very
7 good.

8 MR. HUGHES: Thank you. Those would be my
9 questions for Mr. Jews.

10 MS. ROBESON: Okay. Mr. Jews, I have some
11 questions. You performed the coverage, the propagation maps
12 for the original site, right?

13 THE WITNESS: Yes. That's at 150, I believe, and
14 the higher --

15 MS. ROBESON: Exactly. What was the coverage of
16 that site compared to this site?

17 THE WITNESS: Obviously, the coverage footprint
18 would be bigger or wider, because of the increase in height.
19 But as we go smaller, of course, the footprint will
20 decrease a bit.

21 MS. ROBESON: All right. So under either site,
22 were you able to cover -- there is some questions in the
23 staff report about trying to eliminate the need for another
24 facility. It doesn't look like to me like this eliminates
25 the need for another facility, because you've still got

1 white and yellow.

2 THE WITNESS: That's correct. But --

3 MS. ROBESON: I speak in colloquial terms.

4 THE WITNESS: But as you go to the north is where
5 you see predominantly white and yellow. That's where the
6 terrain or the height, Sugarloaf Mountain, that's where that
7 is on that horizon. It's more or less related --

8 MS. ROBESON: Do you anticipate needing another
9 site at this location?

10 THE WITNESS: We do not have any plans at this
11 time, at this time, but there may be plans in the future.

12 MS. ROBESON: Would the old site have covered, I
13 know the propagation maps are in the file, but I'm not an
14 expert.

15 THE WITNESS: The older site would have covered
16 more, but it would still have succumbed to the same issue
17 going to the north, because it's a terrain issue.

18 BY MR. HUGHES:

19 Q What happens once it hits a mountain?

20 A It just dies off.

21 Q When you say dies off, you mean the radio
22 emissions, the signal?

23 A The signal dies off. You have that loss due to
24 the local clutter.

25 MS. ROBESON: All right. And can you go back to

1 42(b). I'm looking at the two, two maps together. Where is
2 the significant additional coverage? The green right around
3 540(b) there?

4 THE WITNESS: Yes, that's the improvement. If,
5 okay, so you want to see --

6 MS. ROBESON: Yes.

7 THE WITNESS: Okay. So if you look at 42, this is
8 without, you see there are a lot of blue and yellow, which
9 is blue is in vehicle, and yellow which is on street. But
10 with the site on air, where there was blue and yellow, there
11 is now green.

12 MS. ROBESON: Okay. But the yellow is still
13 pretty significant. It's reduced but --

14 THE WITNESS: To the north.

15 MS. ROBESON: -- it's still pretty significant.

16 THE WITNESS: Are you speaking to the north?

17 MS. ROBESON: Yes.

18 THE WITNESS: That's correct. That's where the
19 terrain, the height of the topography.

20 MS. ROBESON: All right. Those were my questions.

21 Mr. Kendrick, do you have any questions --

22 MR. KENDRICK: Yes.

23 MS. ROBESON: -- on Mr. Jews' testimony, or my
24 questions to Mr. Jews?

25 MR. KENDRICK: I have a lot of questions.

1 MS. ROBESON: Okay.

2 MR. KENDRICK: And I say that in just to prepare
3 everyone that it may take me a minute to formulate some of
4 my questions.

5 MS. ROBESON: Take your time. Take your time.

6 CROSS-EXAMINATION

7 BY MR. KENDRICK:

8 Q And if I may, the first question, and I'll throw
9 it to you. If you don't know it, I'll throw it to the room.
10 What was the date of the balloon test?

11 MS. ROBESON: Just to him and then we'll figure it
12 out.

13 BY MR. KENDRICK:

14 Q What was the date of the balloon test?

15 A I'm not sure of that. I don't know.

16 Q I know Ms. Morrison did testify to that. It's in
17 the record, but I think it was late March. I think she said
18 the 27th. But I know it was late March.

19 MS. ROBESON: I think she testified to that. Yes.

20 BY MR. KENDRICK:

21 Q Okay. All right. Let me give this a shot here.
22 Okay. By the way, I want to give this to you with the
23 descriptive information that I now have.

24 MS. ROBESON: Okay. Are you asking that it be
25 admitted with this?

1 MR. KENDRICK: I'm asking that that be admitted
2 with the description.

3 MS. ROBESON: With the descriptive --

4 MR. KENDRICK: Yes.

5 MS. ROBESON: Okay. You need to show Mr. Hughes.
6 Mr. Hughes --

7 MR. KENDRICK: This is the description of this
8 perspective. It says, view of Sugarloaf Mountain with
9 Photoshop, derived from balloon test photo taken from
10 roadway by Dickerson MARC station looking north, northwest.

11 MR. HUGHES: No objection.

12 MS. ROBESON: Okay. So this will be 44.

13 (Exhibit No. 44 was
14 marked for identification
15 and admitted into evidence.)

16 MR. KENDRICK: Actually, I think we gave it a
17 number earlier, but maybe I'm wrong.

18 MS. ROBESON: But it didn't have the --

19 MR. KENDRICK: Oh, it didn't have -- so now it's
20 44. I got you.

21 MS. ROBESON: Yes.

22 MR. KENDRICK: What was 40, by the way?

23 MS. ROBESON: 40 was called the Photoshop
24 simulated view of facility.

25 MR. KENDRICK: Okay. All right. Give me, please,

1 and give me and forgive me if this takes a bit here.

2 BY MR. KENDRICK:

3 Q Mr. Jews, during your answers to questions from
4 Mr. Hughes, you gave responses to questions about data that
5 you analyzed between the existing four towers that are on
6 the documents that we've seen here today.

7 And in particular from February 1, I presume, of
8 2010, through January 31, 2011, or approximately, you
9 answered in the affirmative that there were 12,000 dropped
10 calls, and 5,000 cumulative calls to 911 that were with some
11 assessment about their location in this direction, in other
12 words, these towers, I presume, have some directionality
13 with, that you can analyze and so forth.

14 MS. ROBESON: Mr. Hughes, could you step back a
15 little, because I can't see where he's pointing.

16 MR. KENDRICK: So --

17 MS. ROBESON: Mr. Kendrick, stop a minute,
18 Mr. Kendrick.

19 MR. KENDRICK: Yes.

20 MS. ROBESON: Okay. When you say, this direction,
21 when this goes on appeal, there's a written transcript.

22 MR. KENDRICK: Oh, I'm sorry. Okay.

23 MS. ROBESON: So you have to say, to the west
24 or --

25 MR. KENDRICK: Well, I'll tell you what. I'm

1 going to ask a question that will help make it easier for
2 this record to be clear to anyone that might later just read
3 it.

4 MS. ROBESON: That would be wonderful.

5 BY MR. KENDRICK:

6 Q Great. All right. Mr. Hughes, if you would,
7 there was an aspect of directionality with regard to the
8 data that was assessed on dropped calls and 911 calls in
9 this time period that was mentioned earlier. I'm going to
10 say February 1, 2010, to January 31, 2011. And my question
11 to you is, how many different directions are you analyzing
12 on each of these towers? Is it four directions? Is it two
13 directions? Is it three directions?

14 A It's three directions.

15 Q Three directions.

16 A That's correct.

17 Q So then in the form of a subsequent question, then
18 each is analyzed in approximately 120-degree segments with
19 minor overlap?

20 A Ideally. Ideally, it's 120-degree separation
21 between them.

22 Q Okay. Okay. All right. On any of these towers
23 that were analyzed, was there any possibility that some of
24 the calls that you included in this data might have actually
25 been, might have actually been calls that would not be

1 served by the proposed tower as a result of the overlap of
2 these three different regions that are irrelevant on each of
3 the towers?

4 A No. The numbers that I quoted were only the
5 antennas or sectors that point in this affected area, only
6 serve this area. So, for example, if this site is oriented,
7 let's say, zero, 120, well, zero degrees, 120 degrees, 240
8 degrees.

9 MS. ROBESON: And this site is, is that -- what --
10 read the number there?

11 THE WITNESS: I'm just using this as an example.
12 7WAN153B.

13 MS. ROBESON: Okay.

14 THE WITNESS: Okay. Which is southwest of the
15 subject site.

16 MS. ROBESON: Okay.

17 THE WITNESS: For example, if it's zero degrees,
18 see, this sector points in this affected area of the
19 proposed site area.

20 MS. ROBESON: And this affected area means the
21 subject property --

22 THE WITNESS: The subject --

23 MS. ROBESON: -- the subject site.

24 THE WITNESS: That's correct.

25 MS. ROBESON: Okay.

1 BY MR. KENDRICK:

2 Q Okay. Are you suggesting then that each of these
3 towers has three antennas, one of which you refer to as zero
4 pointing due north, one of which is 120 degrees pointing in
5 a southeasterly direction, and one of which is 240 degrees
6 pointing in a southwesterly direction?

7 A Southwest.

8 Q But zero degrees is due north?

9 A That's correct.

10 Q And is that, so that's always done that way?
11 There's never any sort of a marginal shift from this
12 reference where, perhaps you have three that are at 10
13 degrees, 150 degrees, and 250 degrees?

14 A There is no, there's no site that will have that
15 same antenna orientation. Some sites will have zero to 120,
16 200. Some will have zero -- 30 degrees, 150, 270. It
17 depends on the coverage objective for the --

18 Q I see. But they are all separated by 120 degrees?

19 A Most times, yes. Sometimes they are not. It
20 depends on my coverage objective, and what I'm trying to
21 improve.

22 Q Okay. All right. Given that you suggest there
23 were 1,000 dropped calls each month in this vicinity, did
24 you do any subsequent analysis of your data to determine of
25 the 5,000 calls to 911, how many of those were actually

1 repeat calls from the same device in the same time frame
2 that would actually reduce the number of calls from this
3 5,000 number, which calculates to roughly 13 or 14 a day?

4 A Yes. The stats, or the KPI's, for short, the KPI
5 means, key performance indicator stat, reports only the
6 calls by certain serving sectors in a certain area. So it
7 just gives you a number of how many times 911 was initiated
8 on, initiated on that sector or that coverage area.

9 Q So in other words, if someone were trying to make
10 a call to 911 and the call dropped two times, then that
11 would be an event that would count three times in this 5,000
12 number, correct?

13 A It would be counted, yes. That's how it would be
14 counted.

15 Q So by virtue of this 12,000 dropped calls number,
16 and by virtue of a 911 circumstance being the most urgent
17 request of the system, it's very easy to conclude that this
18 5,000 number, in fact, represents some significant number of
19 dropped calls, as well, and that, in fact, the actual number
20 of attempts, efforts to try and use this for 911 service
21 could be much lower?

22 A It's possible.

23 Q All right. Now, there was a question that was
24 given to you by Mr. Hughes at the front end of this wherein
25 he referred to the dropped calls in this time frame as

1 dropped calls from those who travel, live, or work in the
2 area. Okay. Here is my question.

3 I think when we talk about work, I know of only
4 one employer in the area, Neutron Products, and other than
5 that it is a residential area, a very small residential,
6 very low density residential area, by virtue of the zone.
7 So my question is, let's forget about work in the area.
8 That doesn't really apply. My assertion at the moment.

9 But with regard to those who live in the area, how
10 many residences are we talking about? You mentioned there
11 were complaints from customers that live in the area.
12 What's that number?

13 A I don't have that exact number.

14 MR. KENDRICK: Does anyone in the room have that
15 number?

16 MS. ROBESON: You can't ask the room.

17 MR. KENDRICK: I'm sorry.

18 MS. ROBESON: You can only ask him.

19 BY MR. KENDRICK:

20 Q Okay. So you don't have that exact number?

21 A I don't have the exact number.

22 Q Okay. All right. With regard to how this data is
23 collected, is there any opportunity to analyze the data and
24 determine which of the dropped calls were calls that were
25 being transferred from one tower to another, and which of

1 the calls were calls that were on a single tower, which
2 would indicate a differential between calls from someone who
3 is stationary, and calls from someone who is in a moving
4 vehicle?

5 A It just records, once again, the KPI, the key
6 performance indicator stats. It's based on the sector that
7 is serving that area. It just gives you, for example, I'll
8 go back to the site that is southwest of the site, 7WAN153B.

9 The antennas are pointed at zero degrees.
10 Whatever is in that geographical area, it's going to record.
11 So if this site or sector was serving this area and there
12 was a dropped call experienced, it's going to show that it
13 affected or it happened on this particular site or antenna.
14 I just tried to put that as basic as possible.

15 Q Okay. I'm not sure if this will be of any value
16 in the future, but would it be possible for those of us who
17 are on this letter, that is Exhibit 22, and are concerned
18 about this proposal, could we receive a breakdown of the
19 data that you did to perform this analysis to show which of
20 the calls was dropped from each of the four existing
21 locations, 169C, 153B, 560A and 562B?

22 A We have the numbers where I break that down by
23 sector.

24 MS. ROBESON: Well, do you have them here?

25 THE WITNESS: I do have them here.

1 MR. HUGHES: He can read that out, if that's okay.

2 MS. ROBESON: Yes, why don't you do that.

3 THE WITNESS: Okay. What I have is, I'll leave
4 off the sites that I've recorded and I'll give you them by
5 sector.

6 MR. HUGHES: The better one to look at, and I
7 apologize, is the map on the bottom, because those just have
8 the four sites that are relevant. The other ones have a few
9 others, much further away to the north and to the east.

10 MR. KENDRICK:

11 Q Yeah, I'm just interested in these four.

12 A Sure. Okay.

13 MS. ROBESON: Angle it maybe toward -- yes. Thank
14 you.

15 THE WITNESS: All right. We'll start with 7WAN or
16 7WAN169C.

17 MS. ROBESON: Okay.

18 THE WITNESS: For what I call the B sector, or the
19 sector or antenna that points to the proposed site, I have a
20 total of 1,055 E-911 calls, attempts. Okay. Let's move --

21 BY MR. KENDRICK:

22 Q What about the other dropped calls data? Is that
23 also there?

24 A Sure. For that I have 314 dropped calls. So what
25 I'll do, I'll give you the E-911 and dropped calls as I go

1 down.

2 Q Okay.

3 A All right. Let's go to site 7WAN153B, which is

4 southwest of the proposed site. And the --

5 Q I'm sorry, 153B and which sector?

6 A This is going to be the A sector.

7 Q A sector. Okay.

8 A Total E-911 surrounding calls is 1,145. Dropped

9 calls are 1,200 even.

10 Q Okay.

11 A Okay. Let's move directly south of the proposed

12 site. The site ID is 7WAN560A.

13 Q Uh-huh. And which of the sectors did you analyze?

14 A That is going to be A sector.

15 Q A sector. Okay.

16 A 911 call attempts, received 911 calls, 616.

17 Q 616 911 calls?

18 A That's correct. And for dropped calls for the

19 same sector, 323.

20 Q Okay.

21 A Okay. Let's move southeast. 7WAN562B.

22 Q And which sector?

23 A Actually, there are two sectors that serve that

24 area.

25 Q Okay. Can you break them down by sector?

1 A Sure. A sector --

2 Q A --

3 A Yes, A sector for 911 --

4 Q And what's the other sector going to be?

5 A It's going to be C.

6 Q A and C. Okay. All right.

7 A So it would be A sector for E-911, 836, and for
8 the A sector on dropped calls is \$2,427.

9 Q Okay.

10 A Okay. Let's go to the C sector of the same site,
11 same site being 7WAN562B.

12 Q Yes.

13 A C sector 911 calls 1,296. And the dropped calls
14 is 8,606.

15 Q Okay. That looks like a driving contributor. All
16 right. I don't think I have any further questions for
17 Mr. Jews at this time.

18 MS. ROBESON: All right. Mr. Hughes, do you have
19 any redirect?

20 MR. HUGHES: Just a few. Yes, thank you.

21 REDIRECT EXAMINATION

22 BY MR. HUGHES:

23 Q Mr. Jews, so if this site is approved, though,
24 will it help with reducing -- do you expect it would help
25 with reducing the percentage of dropped calls in this area?

1 A It will aid in reducing.

2 Q And do you expect it would also help collect a
3 fair amount of these 911 calls?

4 A Yes, it will.

5 Q Okay. Mr. Jews, is it fair to say, there were
6 questions about working in the area. Are you familiar if
7 T-Mobile has customers who also, perhaps act as contractors
8 who come out to homes?

9 A That's true. Yes.

10 Q So many different contractors. Do you know if
11 T-Mobile also has some customers that are public safety
12 officials? Do you know that? If you do.

13 A I'm not sure.

14 Q Okay. If, I don't know -- if there is a MARC
15 station within this Dickerson area, about, within a half
16 mile or so away, would this help provide service to the
17 folks traveling on that or walking up to the station and
18 leaving the station?

19 A Yes, it will.

20 Q Okay. Okay. Those are my questions. Thank you.

21 MS. ROBESON: Okay. I have one question.

22 MR. HUGHES: Okay.

23 MS. ROBESON: I'm going out of order, and then
24 mine might generate something from you. Mr. Jews, when
25 Mr. Hughes asked you, would this prevent a fair amount of

1 dropped E-911 calls, can you more specifically characterize
2 fair amount?

3 MR. HUGHES: I apologize. I thought I said, would
4 this help collect calls made to 911 in this area. I may
5 have said --

6 MS. ROBESON: Okay. Collect.

7 MR. HUGHES: -- and this would help drop the
8 percentage of dropped calls, overall dropped calls.

9 MS. ROBESON: And my question is, what's a fair
10 amount of dropped calls that we're eliminating.

11 THE WITNESS: I'll say this. Usually we like to
12 have a grade of service --

13 MS. ROBESON: A what?

14 THE WITNESS: A grade of service --

15 MS. ROBESON: Okay.

16 THE WITNESS: -- of dropped calls happening less
17 than 2 percent. And right now we're a bit above that. So I
18 would like to decrease that. I'd like to have zero.

19 MS. ROBESON: So in your opinion, is that going to
20 get you below -- is the coverage you are adding going to get
21 you below the 2 percent?

22 THE WITNESS: I'm hoping that it will. If
23 anything were to get me, if not below it, very, very close
24 to it. But I cannot give you an exact percentage, but I
25 know it will reduce.

1 MS. ROBESON: Okay. Mr. Kendrick.

2 MR. KENDRICK: Yes, I do have another question.

3 MS. ROBESON: This is our last round of questions
4 for Mr. Jews.

5 MR. KENDRICK: Okay.

6 MS. ROBESON: Mr. Hughes, I'll give you some
7 redirect.

8 FURTHER CROSS-EXAMINATION

9 BY MR. KENDRICK:

10 Q Okay. I'm sorry, I have the small version of what
11 is in front of us here.

12 MS. ROBESON: Okay.

13 BY MR. KENDRICK:

14 Q Mine is Exhibit 37. What is the exhibit number
15 again, 36?

16 MS. ROBESON: 36.

17 THE WITNESS: 36.

18 BY MR. KENDRICK:

19 Q Okay. All right. Mr. Jews, with regard to the
20 topography, which I know you have to take into account for
21 coverage, and so forth. I believe you stated earlier that
22 no assessment had been made, no request had been made of you
23 to assess anything other than the location indicated here,
24 and the ultimate location which is approximately 1,000 feet
25 to the north and slightly west of what is shown on this

1 exhibit. Is that correct?

2 A Correct. I did look at, there was an exhibit, I
3 brought you the name, Ginnon, there's a power plant or
4 something. I remember it was submitted during the public
5 meeting. It was a property, a power plant property or some
6 sort of other --

7 Q Neutron Products.

8 A I'm not sure.

9 Q It was an industrial, an industrial type use?

10 A Yes. I looked at that one, but that one, that
11 property was too far away, and it took me away from my
12 coverage objective, or the area that I needed to improve the
13 coverage on. So I did look at it.

14 Q All right. Well, my question is, are you familiar
15 enough with the topography and your service objective
16 criteria to make an -- you established your 12 years'
17 experience and all of that, a qualitative assessment about
18 the possibility of, I'll put it as a question.

19 Is there a possibility that your service
20 objectives for this region could also be adequately served
21 at a location that is within less than -- I have to get the
22 scale here. Hold on a moment -- less than a half a mile
23 from what is indicated in the finished drawing of Exhibit 36
24 to the south and slightly west, but on the east side of
25 Mount Ephraim Road where the Savage Dairy Farm is located?

1 A It's possible that it will provide coverage, but I
2 need to know what is the ground height at that half a mile.
3 Do I start to lose height? Because if I start to lose
4 height, then I start to lose my coverage group, my coverage
5 rates. So it will provide height, but I don't know if it
6 will be adequate enough, if I use that location --

7 Q Okay.

8 A -- to still provide coverage.

9 Q I cannot speak myself to the difference in
10 elevation, since we do not have a topographical map here
11 today that indicates what that difference is, but
12 experientially having familiarity with biking even in the
13 area myself, I believe it to be less than 50 foot elevation
14 difference from the location that is on this drawing to
15 locations that would be available for consideration at the
16 Savage Dairy Farm.

17 MS. ROBESON: So are you asking him, assuming it
18 was 50 feet location, would that meet --

19 BY MR. KENDRICK:

20 Q Well, I think the question I want to ask, again,
21 is did you make any assessment of anything other than this
22 location? And I think you've already answered --

23 A Yes.

24 Q -- there was one other that is not here, but it
25 was not the Savage Dairy Farm, is that correct?

1 A That's correct.

2 MR. KENDRICK: Okay. All right. I have no
3 further questions.

4 MS. ROBESON: Okay.

5 MR. HUGHES: Nothing. Thank you.

6 MS. ROBESON: All right. Mr. Jews, you can be
7 excused. Mr. Hughes, do you have any, another witness?

8 MR. HUGHES: No, ma'am.

9 MS. ROBESON: Okay. We are going -- now,
10 Mr. Kendrick, it's your turn to testify, and so it's not
11 quite 1:30. I'm going to leave it to you. Would you -- how
12 long do you expect your testimony to go?

13 MR. KENDRICK: I don't think I'll need more than
14 five minutes.

15 MS. ROBESON: Okay. Well, why don't we then move
16 to your testimony, and Mr. Hughes has the ability to ask you
17 questions about your testimony. Okay.

18 MR. KENDRICK: Okay.

19 MS. ROBESON: All right. Would you please raise
20 your -- I think you're already sworn, so you're still under
21 oath. What would you like to say about this application?

22 MR. KENDRICK: First of all, it's sort of test,
23 test, one, two, three. This is clear. I know I've got a
24 pretty good clear voice.

25 MS. ROBESON: She'll tell you if it's not picking

1 you up.

2 MR. KENDRICK: Okay. All right. First of all,
3 thank you everyone. I apologize that we are already at
4 1:30. And I do appreciate everyone listening to what I have
5 to say on behalf of the numerous organizations that were
6 mentioned earlier, and that are entered into the record with
7 Exhibit 22 and others.

8 I first of all want to express disappointment that
9 here today we have no assessment of what we consider to be a
10 good faith proposal for an alternate location that we
11 believe has the potential to satisfy all the same
12 performance characteristics with regard to accessibility and
13 coverage and all the other aspects that were mentioned here
14 today. So it's disappointing to think that we went through
15 the process of public engagement, and yet no followup was
16 made.

17 MS. ROBESON: Are you referring to this Savage --

18 MR. KENDRICK: The Savage Dairy. That's correct.

19 MS. ROBESON: So you think there is another
20 opportunity to co-locate or not to co-locate, to site the
21 facility that hasn't been explored?

22 MR. KENDRICK: Yes, so that it would not be
23 between travelers along the route of -- I believe it is
24 called Mount Ephraim Road there. But it's the road that
25 extends, you know, from Dickerson, goes past the Dickerson

1 station. Yes, it is Mount Ephraim Road. And in particular,
2 I'm going to read from, a crib from this letter that's been
3 submitted, in my notes here.

4 I maintain that the primary objective, and I would
5 have to do some additional analysis myself of the detail
6 that we were just provided by Mr. Jews regarding which
7 sector of which tower, which type of call, et cetera. And
8 again, I maintain that buried within that is still another
9 level of information.

10 When someone is trying to make a 911 call, they
11 are going to keep doing it no matter what. And that can
12 result in a high number of duplicate efforts that get
13 counted into this 5,000. And that the dropped calls are
14 predominantly a result of vehicles traveling through the
15 area, not people who live there and not people who work
16 there. So that is the real focus.

17 And that with regard to that, this alternate
18 technology, as well, that wasn't analyzed, but could serve
19 it, would be eligible. They've shown in their own photos
20 poles along the roadways there.

21 And if, in fact, it's an issue primarily of
22 travelers through the area, that that would be an ideal
23 solution. But let's not go there. We are proposing
24 something --

25 MS. ROBESON: When you alternate technology, I

1 just want to make sure I'm clear on what you are saying.

2 MR. KENDRICK: The pole, the pole mounted --

3 MS. ROBESON: Are you talking about the DARS?

4 MR. KENDRICK: I think it's called DAS.

5 MS. ROBESON: DAS.

6 MR. KENDRICK: But, but notwithstanding that, we
7 would, we are disappointed that no analysis was made of
8 simply engineering the same type of technology at an
9 alternate location on Mount Ephraim Road, but on the other
10 side of the road.

11 MS. ROBESON: You mean the silo type of --

12 MR. KENDRICK: The silo encasing of cellular
13 technology at a location where there is a working dairy farm
14 still to this day. And frankly, without regard to whether
15 that's even feasible or not, I would even entertain, though
16 it seems unorthodox, if there is some issue of -- anyway,
17 actually, let me drop that for a moment.

18 I'm going to read from this letter. We oppose
19 this application as inconsistent with the County's master
20 plan. The representatives here, including Sean Hughes, have
21 read our concerns, and we believe we were working with
22 everyone to get to a location that would be in greater
23 harmony with this protected area, the master plan, and the
24 extraordinary historic scenic resources of the Sugarloaf
25 Mountain Valley.

1 You know, the location is unique. Sugarloaf
2 Mountain itself was designated in 1969 as a national natural
3 landmark, and a documented historic landmark, and an
4 important destination for many in the Washington area. I
5 think I mentioned earlier, even, there are people that come
6 back to this area that have moved away, and on their brief
7 trips back at Thanksgiving and other times will make a trip
8 there because they've got a connection to it from their
9 childhood.

10 The proximity of this location to a designated
11 rustic road dictates the need for additional sensitivity to
12 the protected view shed. It is very natural when traveling
13 along this section of Mount Ephraim from Dickerson toward
14 the mountain, to be looking in the very direction that they
15 propose to place this tower. And it's right smack in the
16 middle of it.

17 You know, this propose location continues to
18 present conflict with the County's preservation programs.
19 And an effort to shift the site, or co-locate elsewhere, or
20 utilize the state-of-the-art technology, albeit at
21 additional expense, would promote harmony with the rural
22 aesthetics and community character. And we believe these
23 things should be undertaken.

24 Again, the applicant has made preliminary efforts
25 to mitigate the effect, but, you know, we are here to oppose

1 this proposal as it exists, even with the 1,000 foot
2 revision, and ask that an analysis of the civil engineering
3 and communications engineering potential of the Savage Dairy
4 Farm be considered first, or additionally.

5 MS. ROBESON: Okay. Just so you're clear, the
6 Board of Appeals can't initiate that.

7 MR. KENDRICK: I got you. You can only reject.

8 MS. ROBESON: We can judge, but we do have the
9 ability to judge need for the facility. But we can't force
10 T-Mobile to look at a particular site.

11 MR. KENDRICK: Okay.

12 MS. ROBESON: Mr. Hughes, do you have any
13 questions of Mr. Kendrick?

14 MR. HUGHES: Just a few, not many.

15 CROSS-EXAMINATION

16 BY MR. HUGHES:

17 Q Mr. Kendrick, would you agree that the folks who
18 do have farms or homes in this area, like most of us who do
19 have homes, may have service technicians or contractors who
20 come to their home, and may use wireless service, such as
21 electric company, somebody building a deck, somebody cutting
22 a lawn, somebody delivering flowers, those type of service
23 people, people who work and come to people's homes?

24 A Yes, I agree that people would come to these homes
25 and would have with them a cell phone which, like any of us

1 who travel with cell phones, would like it to work
2 everywhere, but have to deal with the realities. Go ahead.

3 Q Okay. Thank you. Do you, yourself, have a
4 wireless phone?

5 A I do.

6 Q Are you aware of the train station nearby this
7 area?

8 A The MARC station, I am.

9 MR. HUGHES: Those would be my questions. Thank
10 you.

11 MS. ROBESON: Okay. Closing arguments. Do you
12 have any, Mr. Hughes?

13 MR. HUGHES: I'll be pretty brief, but yes,
14 please.

15 MS. ROBESON: Okay.

16 MR. HUGHES: We would start by respectfully asking
17 for a report that recommends approval. We believe that the
18 zoning criteria for the County as established has been met
19 in this case through our witnesses and exhibits. We believe
20 that we meet the leading cases on your special exception in
21 Maryland, *Pritts v. Schultz*, *Mossberg*.

22 There is also another case, and I apologize. I
23 don't think I have it with me. A recent federal district
24 case from Frederick County. I think it came out in
25 December, I believe, of last year, which also talks, there

1 was analysis about whether a code requires an applicant to
2 look at every particular place to put a site, or whether you
3 need to meet the criteria and show how this meets the
4 specific zone criteria.

5 I guess our position would be that there is a need
6 out here, which has been established through our engineer's
7 testimony, through our prop maps, through some analysis by
8 the Tower Committee. This goal, this site would greatly
9 improve the coverage for our customers. It is built for
10 co-location so others could come along.

11 Wireless is very important to many of us. The
12 usage of it is growing. The legislature here certainly has
13 noted also that it's valuable by allowing it in almost every
14 zone by a special exception for a new tower.

15 This is, we do acknowledge that this is a unique
16 area. And that's why we have gone to such lengths here,
17 unique situations to attempt to work with the community, to
18 come forth with an application that has been modified with a
19 great expense going to the silo type design, lowering the
20 height, moving it further away from the road.

21 We believe with these concessions showed by the
22 photo simulations, the areas and others, that this would
23 blend in, in a reasonable amount, and provide this important
24 wireless coverage. In fact, where we struggle with this is,
25 look, we understand there is a balance, but if there is

1 going to be coverage in this area, we don't think you can do
2 much better than what's being proposed here, striking a
3 balance. And we believe that, again, it meets the code,
4 which is obviously the most important thing.

5 And I, we certainly respect and appreciate the
6 work that is being done by the organizations that are in the
7 letter and mentioned, and we did appreciate having
8 discussions with them and with Mr. Kendrick.

9 I guess I would say, we're disappointed, too,
10 because while maybe it's not what they think is best, we
11 certainly have the support of many of the neighbors who live
12 around there, and we listened to a lot of those neighbors
13 who were at the meeting who said, move it further off the
14 road. Can you make it look like a silo. Can you reduce the
15 height.

16 So all those things are done in order to try to
17 make this something that will meet their requirements, and
18 try to make people happy. You can't make everybody happy.
19 We understand that. But we also thought that we had done a
20 lot here. And we think it does meet the code requirements.

21 And we appreciate the time from everyone today,
22 and respectfully request approval.

23 MS. ROBESON: Okay. Mr. Kendrick.

24 MR. KENDRICK: We request disapproval. And the
25 basis for that request is as follows. While it's pretty

1 clear that significant effort has been placed on this
2 location, the location being the property owned by
3 Mr. Carlisle, no effort has been made to date to assess the
4 alternate proposal, which Mr. Hughes made mention of. While
5 they listened to us talk about it, they did no analysis.

6 And we believe that like almost no other location
7 anywhere that would come under this Tower Committee and
8 review process, that the Sugarloaf Mountain is particularly
9 important with regard to preservation of the view shed, that
10 by placing this in a property that is in the direct line of
11 sight from the most heavily traveled roads in the area where
12 they are proposing, between the travelers there and the
13 mountain, that they are, in fact, creating what amounts to
14 an irreversible damage to the view shed.

15 And that that is not consistent with all of the
16 various protections mentioned earlier, including the rustic
17 roads, the historic landmark, and other aspects.

18 So from that standpoint, while the letter of
19 certain laws may be served by the process and analysis that
20 have lead to this proposal, we believe that we have not
21 addressed the requirements of these other aspects, and
22 request that you deny this proposal and send it back for
23 analysis of the proposed alternate location at the Savage
24 Dairy Farm, where this silo, or a similar silo configuration
25 could be located to the east and south of Mount Ephraim

1 Road, out of the view shed, and in the context of a working
2 dairy farm, as opposed to the middle of a field.

3 And again, all the talk about what you won't see
4 about the service area at the bottom, because there are
5 trees and so forth, matter not a whit when you are talking
6 about something that, in effect, from the roadway to the top
7 of that silo, amounts to 15 or 20 stories height in this
8 region. And you look up to it and see right, half way
9 between your line of sight to the top of the mountain, this
10 silo.

11 MS. ROBESON: Okay.

12 MR. HUGHES: Could I have 60 seconds of rebuttal,
13 if I'm allowed.

14 MS. ROBESON: No.

15 MR. HUGHES: Okay.

16 MS. ROBESON: What I am going to do is this. I am
17 going to ask your input as far as I am going to refer this
18 to the Tower Committee to see if the changes affect their
19 original recommendation.

20 Timing. Does anyone have any input on how long to
21 keep the record open for that?

22 MR. HUGHES: For the Tower Committee to respond?

23 MS. ROBESON: Yes.

24 MR. HUGHES: Well, they meet the first Wednesday
25 of each month.

1 MS. ROBESON: Okay.

2 MR. HUGHES: So I would think if Ms. Williams, the
3 chair, couldn't get the feedback before that, she could
4 probably get it that day, is my -- based upon knowing how
5 they work. They meet once a month.

6 MS. ROBESON: Well, let me do this. Since it's a
7 board, an independent board, I'm going to give them 60 days,
8 which would be until -- 30 days -- I will give them until
9 the first Wednesday?

10 MR. HUGHES: They meet the first Wednesday of each
11 month.

12 MS. ROBESON: I'm going to give them until July
13 15th. I'm going to hold the record open from -- and ask
14 that they get their recommendation in July 15th. Then I'm
15 going to keep the record open until July 29th. And the
16 record is open until July 15th solely to receive that
17 report. It's not an opportunity to submit additional
18 testimony. It's only to receive that report.

19 I'm going to give anyone in opposition, if they
20 wish cross-examination on that report, I'm going to give
21 them until July 29th to request that. If I receive no
22 requests for cross-examination, the record is going to close
23 July 29th.

24 If I do receive a request for cross-examination, I
25 have dates for a new hearing Thursday, 9/8/11. I have a

1 couple of dates that we could possibly schedule a hearing in
2 September. Two are right around Labor Day, so I'm not going
3 to suggest them. I have Thursday 9/8 and Friday 9/16. And
4 that hearing would solely be to permit cross-examination on
5 the Tower -- of T-Mobile's witnesses on the Tower Committee
6 report. Okay. So, do you have a choice between 9/8 or
7 9/16?

8 MR. HUGHES: I would vote for the earlier one.

9 MS. ROBESON: 9/8.

10 MR. HUGHES: Please.

11 MS. ROBESON: So, I'm going to request that the
12 Tower Committee get their report in by July 15th. I'm going
13 to offer the opportunity to -- and I'll offer the
14 opportunity to T-Mobile to put on -- to both sides, if there
15 is a request, to put on evidence related to the Tower
16 Committee, whatever they come back with. They may say, we
17 don't care. You know.

18 And if I don't receive a request to have a hearing
19 on the Tower Committee's report, the record is going to
20 close July 29th. If I do, we'll have the hearing 9/8/11 at
21 9:30.

22 MR. HUGHES: I think I know the answer, but can I
23 ask you a question? If the Tower Committee gave you a
24 report a month earlier than July 15th, would that speed up
25 the 14-day? I guess I'm curious as to what impact that

1 would have if they provided it earlier?

2 MR. KENDRICK: I would like to keep the Thursday,
3 September 8th.

4 MR. HUGHES: Not as far as the hearing, but as far
5 as the response, I guess.

6 MS. ROBESON: Well, what we could do is this. We
7 could say, we could keep the record open 14 days after we
8 receive the Tower Committee's report.

9 MR. KENDRICK: I have a problem with that, in that
10 it falls in the summer time frame. I think we would need to
11 have through the bulk of July in order to make sure that
12 appropriate opportunity is given to anybody that might wish
13 to request for cross-examination.

14 MS. ROBESON: Okay. Mr. Hughes. I understand
15 that you want to have this done. What I don't want is
16 another situation like the school system where I have all
17 sorts of evidence that I feel, you know, obliged -- I don't
18 want to get into that.

19 I am going to keep it at the dates we just
20 announced, and if there is a request, that we'll have a
21 hearing on September 8th. Mr. Kendrick, you understand that
22 the hearing on September 8th would not be re-opening the
23 entire -- and I'll put this in the notice that we're going
24 to have to send out.

25 This hearing would not be on the whole kit and

1 caboodle. It would only be on the Tower Committee's report,
2 whatever advice they want to provide. All right.

3 MR. KENDRICK: Okay.

4 MS. ROBESON: So it's not re-opening the case for
5 additional testimony on all the standards.

6 MR. KENDRICK: Okay.

7 MS. ROBESON: Okay?

8 MR. KENDRICK: I understand.

9 MS. ROBESON: All right. So what we'll do is,
10 with that in mind, we'll continue the case. We'll leave the
11 record open until July 29th, and if necessary, until
12 September 8th. And we'll continue the hearing, if
13 requested, until September 8th at 9:30. Okay. So we're
14 adjourned.

15 MR. HUGHES: Thank you.

16 MR. KENDRICK: Thank you.

17 (Whereupon, at 1:35 p.m., the hearing was
18 concluded.)

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C E R T I F I C A T E


DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Petition of T-Mobile Northeast, LLC and J.M. Carlisle

Special Exception No. S-2800

OZAH No. 11-20

By:

A handwritten signature in black ink, appearing to read "Teresa S. Hinds". The signature is fluid and cursive, with the first name "Teresa" and last name "Hinds" clearly distinguishable.

Teresa S. Hinds, Transcriber